

1885-014 Chancery Causes. James Gillenwaters vs. Sanders H. Levacy bc
Lee Co. S. H. Levacy vs. James Gillenwaters

Redman, Testament, Roberts, Babb, Moore, Osborne, Lawson, McPherson

CA-Contract Dispute
T-Property

Will: 1859: Jesse Roberts: Lee County

-Deed

2

To the Honorable John Kelly Judge of the Circuit
Court of Lee County Virginia

Humbly complaining your orator James Williamson
Citizen &c. respectfully sheweth to your honor that he
fore to wit on the 23rd day of November 1873. he contract-
ed for the purchase of a tract or parcel of land ly-
ing and being in said County from one Sanders H
Leracy. and adjoining the lands of Patrick Leracy
Thomas Anderson Daniel Roberts Solomon Cowan
Hugh Collier and Allen Chandler containing as
represented by the said Leracy Two hundred &
fifty acres. for which your orator undertook and
promised to pay to, said Leracy the sum of Two thousand
represented to your orator that he was seized of said land in fee
said dollars and the said Leracy undertook
and bound himself to convey said land to your
orator by a good and sufficient deed in fee
simple with ^{commitments of} general warranty as soon as the pur-
chase money was fully paid.

That your orator paid down in cash to the said
S^r Leracy the sum of \$500⁰⁰. and executed for
the balance his three several bonds or notes each
for \$500⁰⁰. The first of which became due
and payable on the 1st day of April 1874.

The second on the 1st day of October 1874 and
the third and last is to become due and payable
on the 1st day of October 1876.

Your orator will further state that upon the bond
executed by your orator and which become due and
payable on the 1st day of April 1874 he has paid the
sum of \$375⁰⁰. Thus making the sum of \$895⁰⁰ which
he has paid towards the purchase price of said land
leaving a balance of \$1105⁰⁰ still due and owing
upon the note which become due and payable
on the 1st day of October 1874. The said Sanders
& Leracy for the benefit of Andrew Lestaniunt
has brought his suit at law to collect said note
and said action is now pending in the Circuit
Court of Lee Co. Va. Your orator will now state
that heretofore to wit on the 5th day of January ¹⁸⁷⁶
the said Sanders & Leracy came to your orator
and represented to him that he had heretofore
to wit on the day and year last aforesaid recon-
veyed said land to his brother W. W. Leracy from
whom he had purchased said land, and
requested your orator to deliver up to him the

The Little bond which before that time he had
executed to your orator, representing to your ora-
tor that the said W. W. Leracy was the legal owner
of said land and must make the conveyance
when it was ^{made} and thereupon your orator thinking
from said representations of said Leracy that it
was right and proper for him to do ^{did} did deliver
to said Leracy his title bond and take in stead
thereof the Little bond of the said W. W. Leracy
and afterwards to wit on the day and year last afore-
said the said W. W. Leracy executed to your orator
his title bond binding himself in the penal sum
of \$4000.00 to convey said land to your orator in fee
simple with covenants of general warranty as
soon as the purchase money is fully paid which
will more fully appear by reference to said bond
which is herewith filed as part hereof Marked (A)

Your orator will now state to your Honor that
this land is a part of a large tract of land owned
by Jesse Roberts in his lifetime. That some
time before the death of said Roberts he under-
took to partition his lands between his children
and heirs and that he did make partition

There of which will more fully appear by reference
to the last will and Testament of said Roberts now
of Record in the Clerk's office of the Circuit Court
of Lee County Va a copy of said will is filed here
with marked (B) as part hereof.

Your orator will further represent that he is ad-
vised that under said will the children of said
Jesse Roberts only took a conditional life estate
liable to be determined upon their abandonment of
their lot or parcel, and certainly determined at
their death when said land by said will absolutely
rests in the grandchildren of the Testator Jesse
Roberts, all of which fully appears by said will
a copy which as before stated is filed here with
marked (B) and to which reference is here again
made. Your orator will further state that two of
the sons of the said Jesse Roberts to wit John
and Waller Roberts sold and conveyed or at-
tempted to convey their shares ^{of said land} under their father's
will to W H Leacy. The said John by deed bear-
ing date on the 28th day of December 1868 a copy of
which is filed here with as part hereof marked (C)

W. W. Leracy will know that they did not have
good ^{to} title, said ^{Land} and they will know that any
conveyance which they might make, ^{or attempt to make} would
not pass the legal title thereof and your orator
charges that he was defrauded by their conceal-
ments, that said sale to him was an actual
fraud, and that the said Leracy will know it.
Your orator will further state that the said
W. W. Leracy is notoriously insolvent and his bind-
ing himself to convey said land is utterly
worthless.

Your orator being ⁱⁿ remediless at common law is
relievable only in a Court of equity, his prayer
therefore is that the said Sanders & Leracy W. W.
Leracy Andrew Testament, Wallum Robert and
John Roberts be made parties to this bill, and
that they each be required to answer to
several allegations on oath, that the said
said Sanders & Leracy for &c be enjoined from
any further proceeding in his said suit at law,
that he be enjoined and restrained from the
collection ^{of} the balance still due on the note

and the said Waller by deed bearing date on the
4th day of August 1872. a copy of which is filed
as part hereof marked (D) That the said W W Leracy
sold and conveyed the same to Sanders & Lera-
cy by deed bearing date on the day of
May 1873. a copy of which deed is filed here
with marked (E) as part hereof and that said
Sanders & Leracy sold and ~~and~~ bound him-
self as before stated to convey to your orator.
but that he recovered as before stated to the said
But this last mentioned conveyance has not yet been recorded.
W W Leracy. Your orator will further state
the deeds of the said John & Waller Roberts by
reference to the said W W Leracy did not pass the
legal title to said land because there was no title
in them greater than a life estate and that this
life estate might ^{be} sooner terminated by a contingency
and that it was terminated by said sale and at-
tempted conveyance ^{and abandonment of said land}. That they could not
pass a larger estate than was in them and
that said W W Leracy nor Sanders & Leracy nei-
ther by their said purchases of or said acquired
good title to this land. Your orator further
charges that the said S W Leracy and the said.

To the Honorable John A. Kelly Judge of
The Circuit Court of Lee County Virginia

The bill of review, of S. H. Levacy, in
a pending cause in this Honorable Court
in which James Gillinwater is plaintiff
and your complainant and others ~~were~~
defendants. The said Gillinwater at
the August term 1875, filed his bill and
obtained an injunction, to stay proceedings
at law on certain purchase money notes
executed to your complainant as hereinafter
set forth.

W. H. Levacy, a brother of this complainant
was the owner of a tract of land or some
interest therein, he became liable to answer
an indictment, for a breach of
U. S. Revenue laws, and was in custody
of the Marshall for the Western Dist of
Virginia, and while under arrest, was
granted bail in a bond of \$1000. on this
bond your complainant became security,
and to indemnify and save him
harmless the said W. H. Levacy conveyed to
your complainant said land by deed
absolute or complete on its face. But
said conveyance was only upon the contingency
that your complainant had to
pay said bond to become operative, and
was therefore in the nature of a mortgage.

Whilst your Complainant was thus the holder of the legal title, the said W. W. Levacy bargained and sold it to the plff, on the 23^d day of Nov. 1873, before said bond had been released or forfeited. Your Complainant still to protect himself took the notes due & payable to himself, and received a part of the purchase price paid said Gillinwaters the plff. Soon after this transaction said W. W. Levacy was released from the penalty of said bond and your Complainant became satisfied as to his responsibility and gave up said bonds to W. W. Levacy and paid over every dollar of money received by him on said purchase. And notwithstanding the sale aforesaid re-conveyed said lands back to W. W. Levacy, between whom and the said plff alone said sale had been executed, and then on the 8th day of Jan. 1875, the said Gillinwaters surrendered and gave up your Complainant's title bond and took and accepted W. W. Levacy's title bond bearing date on the last day named for a title to said land. And thus your Complainant ceased from that time forward to have any interest whatever in said transaction. The purchase money notes

thus surrendered by him to W. W. Levacy
was transferred to different persons, one
to Andrew Testament who sued thereon and
to enforce which gave rise to the original
bill, and pending cause - All these facts
fully appear by the papers and exhibits
filed in said cause; to which reference is
here made as well as to the exhibits theretofile.

The main question however, in the cause
turned upon the title to said land, which
was held not good by the Court and said
Contract rescinded and an account of
rents & profits ordered - The plff Gillin-
waters had alleged in his bill that this
trade was made with this Complainant
that allegation was denied by the answer
of Complainant and the said W. W. Levacy
and the proof showed it to have been a
trade between W. W. Levacy and said Gillin-
waters - Reference is here made to the depositions
in the original cause and answers before
mentioned - An account of rents and
profits was taken, upon arbitration en-
tered into between W. W. Levacy and said
Gillinwaters this Complainant being in
no wise a party thereto - nor had he
any part therein - The paper signed by
them (W. W. Levacy & Gillinwaters) was acted on

By Commissioner H. J. Morgan, and is in
file therewith, and as to rents & profits,
improvements and payments said
paper forms the basis - said report &
proper are also respectfully referred to.
Although the plff alleged he made this
trade with this complainant, and the
same was denied as before related and
the answer sustained by the proof - the
decree of Dec. 8 - 1875, without passing
upon the question judicially, recites "that
the Contract or sale of land made by the de-
fendant, Sanders H. & W. W. Levacy" &c. be
set aside and this complainant enjoined from
collecting said notes which he had never
endeavored to do and then goes on to direct
the account of payments rents & improve-
ments - which said rents & improvements
were submitted for arbitration as aforesaid
the report made & confirmed; and although
this complainant had no interest therein
was no party to said arbitration, was
in no way liable to the plff; yet the
decree of April 5 - 1877 confirming said
report adjudged personally against this
respondent and H. W. Levacy the sum of
\$1001 25 with interest on the whole sum
from.

March 1st. 1877, appointed a commissioner to
sell said land, and so much of this
Complainant's as should be found necessary
to pay the same. Although this ~~reason~~
Complainant appeared and answered in said
Cause, the litigation was carried on wholly
between W. W. Levacy and the plff., and was
mainly upon the question of title, and this
respondent never knew as a matter of fact
that such a decree had been rendered -
^{until recently.}
Subsequently execution has been issued
for said balance after the application of
the W. W. Levacy land sale ~~for~~ and is
now in the hand of H. Miles D.S. for collection.
Your Complainant was recently sued at
law by a holder of one of these purchase
money notes, from W. W. Levacy upon his
implied assumpsit to pay the same because
it had been executed ^{to him} and he made
defence thereto and was absolved from
the payment, because W. W. Levacy having
no right of action against this Complainant
could vest no such right in an other - In
this case having conveyed said land to
W. W. Levacy, & lifted his title bond from
Gillinwaters the plff., and Gillinwaters
having accepted W. W. Levacy's bond for
the same and surrendered up Complainant's

It was a clear release to the Complainant and he was in no wise bound for the further performance thereof. He is advised therefore it was error to decree against him the sums aforesaid, or any other sum and that said errors are apparent from the papers of the cause. He alleges that James Gillinwater is a non resident of the Commonwealth of Virginia and is wholly insolvent so that if he pays the execution aforesaid he will have no remedy against him the said Gillinwater.

The object of this bill therefore is to have a review of the proceedings and decrees therein, and to have said errors corrected, and said cause fully reviewed and other errors manifest in the papers therein set aside & corrected. And further to enjoin and inhibit the said James Gillinwater his agents & attorney and the said deputy sheriff from collecting said execution as aforesaid.

To effect which he prays that James Gillinwater be made a party defendant thereto, and answer this bill upon oath; that said ~~errors~~ ~~be~~ cause be reviewed and said errors and all other apparent thereon corrected and set aside

and that he the said Gallinwaters be en-
joined and inhibited from the collecting
of said excutic in any part thereof
and for all other further and general relief
may upon issue &c.

A. L. Pridemore
for S. H. Levacy.

Virginia Lee County to wit-

This day Said S. H. Levacy personally
appeared before me and made oath
that the statements contained in the foregoing
bill so far as made upon his own
knowledge are true and so far as made
upon information derived from others
he believes them to be true.

Given under my hand this 10th day
of Feb'y 1883.

John R. Gibson Clerk

£ 5.98
at 15.00
Cour. 7.50
8, 1.00

\$ 29.48

Sanders H. Levacy

v. Bill of Review

James Gilliwaters

Injunction granted. Bond with
good security required in
double the sum of the decree
hereby enjoined, with conditions
to pay to said decree & all
costs & damages awarded against
the plaintiff, should this injunc-
tion be hereafter dissolved.

J. A. Kelly
Feb. 16 1883

To clerk of Cir. Ct.
Lee County.

1883 Mr. Term Bill filed

1884. Court is this year

1885. Mr. dismissed at last
Costs.

To The Hon John A. Kelley Judge of the
Circuit Court of Le & County

W. M. Levee a defendant to a bill
filed and pending in this Court by
James Gillenwaters, Comes and says that
it is not sufficient in law.

But if answer should be required
he answers and says that the statements
set out in the bill do not import
a correct history of the transaction therein
referred to, It is not true that the purchase
was made by the plaintiff from J. H.
Levee it was made directly from
his respondent. He purchased the
land from John & Walter Roberts to
whom the land was devised by their
father James Roberts as set out in
the bill. This will is singularly framed
and its phraseology rather unusual
it is manifestly the production of an
untutored man but little versed in
legal technicalities and even limited
in his mother's tongue, yet he is advised
that it substantially performs the office
intended by the testator so as to vest each
of the devisees with the land set apart
to him or her by the will, Your protest
is advised that the provision in the will,
that if any of the children of the testator
should move off the land devised
to him that the other children should
occupy the same till their return" is

Contrary to the policy of the law
and is nugatory, All the devises mutually
accord the fact that each has an absolute
right in the simple to the land devised
to him or her and ^{none} no claims any right
to the land of another though he might
either move off or alienate the same.

Your Respondent states that it
was he and not S. H. Leracy who
first bargained and sold the land
to the plaintiff. At that time S. H.
Leracy was holding the right to
said land in trust for respondent
which fact was communicated to the
plaintiff, and for this reason the
note for the purchase money was
executed to S. H. Leracy and a
bond was executed by him to Gilman
for the title. Afterwards S. H. Leracy
conveyed to respondent the legal title
and then the bond which the plaintiff
held was lifted and substituted
by the bond given by respondent for
title. Before that the plaintiff made the
purchase he was informed of the character
of the will of Jesse Roberts, and before
the execution to him of the bond of
respondent, he ^{person} came to the Court house
of this County and examined the will
of the testator Roberts and took the
advice of P. C. Johnson as to its effi-
cacy and effect. Therefore whatever

difficulties it may present. But the same was well known to the plaintiff. And at this time the same respondent proposed to him that if he had any misgivings about the validity of the title, he would then rescind the contract deliver him up his notes and pay him back the money which he had then paid, by him accounting for the use and occupation of the land. But he positively declined to do so, and answered that he would not sell the land for less than \$2500. After this he paid the same respondent \$1000. Nothing the sum to be paid as stated in the bill. From these statements it will be seen that the allegations in the bill as to fraud concealment or unfair dealing is all without foundation and made so as to defer & delay the collection of the purchase money due from him. The allegation of the insolvency of respondent is also gratuitous and untrue. He considers himself worth at least \$1500. After the payment of all just dues,

Respondent is ready at any time to make a deed with general warranty to the land sold to the plaintiff upon payment of the purchase money. And having now answered prays that the injunction be dissolved.

Hagan & Richardson

W. W. Leveay has made oath before
me that the statements in the foregoing
answer are true or he believes

John R. Gibson D.C.
Dec 1st 1875.

W. W. Leveay

ads { answer & sworn

Jas. Gillenwaters

Filed Dec 2nd 1875.

James Warr, Clerk.

6 80 to Jan'y 1877.

Respondant further states that Solomon Owens gave up a part of the land he had rented to Hiram K. Leacey and said Hiram K. was preparing to tend the same, when he rented it to your Respondant also, and your Respondant cultivated it.

To the Hon John A Kelly Judge of the Circuit Court of Lee County Va

The answer of J. H. Redman to a rule awarded against him in the Chancery cause of James, Gilleenwater vs Saunders & Leacey to show cause at the present term of your honors court why he should not be required to pay the rents of the land to a Commissioner of this court. Respondant answering says that some time in the Fall of 1878 Respondant & Solomon Owens rented a tract of land from W. W. Leacey and Respondant went on to sow wheat & planted a crop of corn in Spring of 1879. Respondant was to pay one third of the grain raised on the land and before wheat harvest he was notified by Hiram K. Leacey that the rents of the land had been purchased by him from W. W. Leacey and Respondant thereupon entered into an obligation to pay the rents to said Hiram K. Leacey, and paid him the rent of the wheat before he was served with process in this cause. Respondant now has

the one third of the corn made
to pay to said Hiram K. Levey
or such other person as the
court may decide shall receive
it. Respondant supposes there
will be something near two
hundred bushels of rent corn
though there may be more or
less. Respondant would further
state that he is about to remove
from the premises upon which
the rent is and desires that
some disposition shall be made
of the rents at this term of the
as he cannot take care of
the same after he leaves the
premises. And now having
fully answered he prays to
be hence dismissed with his
reasonable costs. and as in
duty bound will ever pray
to

~~Motion!~~

Rallyn for Resp^t

Virginia:

Lee County to wit:

This day J. H. Ridman made oath
before me the undersigned that
the facts set forth in the foregoing
answer are true in so far as
they rest within his own knowledge
and that so far as they depend
upon information derived from
others he believes them to be true
Given under my hand this
the 29th day of November 1879

James W. Orr. Clerk.

J. H. Redman

ads ~~by~~ answer

James Williamson

Filed Dec 1st 1879.

Geo W Orr, Clerk.

To the Hon John A Kelly Judge
of the Circuit Court of Lee County
Virginia

^{I demur &}
The answer of James
Gillumwater to the bill of review
of Saunders & Leacy exhibited in
this honorable court against him:

The defendant says he is advised
there is good cause of demur
to said bill & he doo demur
accordingly & prays judgment

that waving his said demur
but relying thereon for answer
to said bill or so much as
he is advised it is material
for him to answer respondent
^{he is advised}

says, that the time within
which a bill of review may
be filed has long since elapsed
in this case & he relies on and
pleads the statute of limitation

to said bill of the plaintiff:

If mistaken as to the law on said point respondent says it is passing strange that for a period of ~~nearly~~ six years the said ~~plaintiff~~ who was a party to the suit was represented by able & skillful counsel should be liable to a decree for \$100/ ²⁵ with interest from March 1st 1897 till paid & costs & the said plaintiff should not know of its ^{existence} until recently(?) it is to be remarked that this strange ignorance of the plaintiff continued until his brother W. W. Levey had left the state and that to in an insolvent condition then he recently(?) discovers that he is unjustly subject to a decree of \$100/ ²⁵ &c. His counsel doubtless were acceptable and

to keep him informed as to the progress of the suit
doubtless well paid, & ~~pltf~~ with \$500⁰⁰
of respondents money received in
April 1873 & \$290⁰⁰ paid April 30th
1874 & \$100⁰⁰ paid pltf assignee April 75
& \$5⁰⁰ pd March 31st 1875 to Hogan
for land to which there was
no title turns the money to an
insolvent Brother & is so at free & this
is Equity and good conscience! Certainly
not on its face it is inequitable and
besides respondent denies that
the plaintiff paid W W Leacey said
sum of \$895⁰⁰ & its item; respondent
insists that at the time of the exchange
of title bonds he was informed as
his rights under to the title under which he held ~~that~~
that the plaintiff came to respondent
& represented that he had conveyed
to W W Leacey the said land & that
he said W W Leacey was the legal owner
of said land & must make the title

your respondent being uninformed
 acted upon the representations of
 plaintiff; which the record shows
 was part of a cunningly conceived
 plan to strip respondent a confident
 & unlearned man of \$875⁰⁰ of his hard
 earned money - and a court of conscience
 is asked to settle the iniquity & call
 it justice requiring strict proof of
 the bill's bill debt proofs to be heard & dismissed
 with his costs as in duty &c
 Duncan Monahan &
 Morgan

In Debt Court to wit

The def has made oath to the
 truth of the foregoing answer so far as states in his own
 knowledge & his belief of the truth of facts stated as
 in grade or advice or counsel. Given under my hand
 this 29th Nov 1883.

J. A. Hyatt CLK

Samuel W. Loring
 vs. Duncan & Morgan

James Gillman et al

Filed in open court
 by James Gillman
 Nov. 30th 1883
 J. A. Hyatt
 Clerk

Ch. 6 40

To The Hon^{ble} Jno A Kelly Judge of
The Circuit Court of Lee County

The Separate Answer of Andrew Testament
to a bill filed against him & others
in this Court by Jas Gillenwaters
Respondent states that he has heard
and the Answer of his Co-deft W
W. Leracy and that he believes
the allegations & statements therein set
forth to be true and adopts
them as part of this Answer.

He is satisfied that the sale of the
land in the bill mentioned was made
to the plaintiff by W. W. Leracy, and
at the time that the bond of the
latter was executed to the former
for a title he had a full knowledge
of the will of Jami Roberts, under
which title was derived. He is
satisfied that the bill of the plaintiff
is for the purpose of hindering and
delaying respondent in the collection
of the purchase money - After a
knowledge of the character of said
will, the said W. W. Leracy offered
to rescind the contract of sale and
pay back to the plaintiff the money
which he had paid but the plaintiff
refused, he is therefore in default.

He prays that the injunction granted
be dissolved and bill dismissed

Wogan & Richardson

Ans. Testament

adv { ans

Jrs. Gillman & Co.

Filed Dec 21 1875.

James W. Orr, Clerk.

C 50

Ch 109 C

W. J. Gillman & Co. Testament made with before me
that the foregoing will contain the truth.
Witness my hand this Dec 21 1875.
John A. Gillman & Co.

To the Hon John A Kelly Judge of
the Circuit Court of Lee County Va.
The separate answer of S. H. Leracy
to a bill filed in this Court against
him & others by James G. Hinesworth,
He states that he has read the answer
in this cause of his Co-defendant
W. W. Leracy. That the facts therein
stated he believes to be true and
adopts it as part of this answer.
He avers that it was not he but
W. W. Leracy who made sale of the
land in the bill mentioned to the
plaintiff. That at that time he
held the legal title in trust for
W. W. Leracy and subsequently
conveyed to him the same, and
that the bond of respondent held
by the plaintiff was lifted and
the bond of W. W. Leracy executed
in its stead, and having read
ansured prays to be hence dismissed
Hogan Pridmore

S. H. Leracy has made oath before me that
the statements in the foregoing answer are true
as he believes. Dec 10th 1876

John R. Gibson D.C.

S. H. Leracy

abs. ans

Jos. G. Linnworth

Filed, Dec 21 1875.

James W. Orr, Clerk.

to 80 to Jan'y 1877

Chas. 1000.

To His Honor John A. Kelly Judge of
the Circuit Court of Lee County by
John & Walter Roberts who are
made defendants in a bill filed
in this Court against them & others
Come and say that it is not
sufficient in law, when for
they answer

Wogan & Pridmore

Jos & Walter Roberts

ads { sum

Jos. Gillenwater's

Filed Dec. 2^d 1875.

James W Orr Clerk.

Demerit good

to 25 to June 1877.

D. H. Levaey

Vol 3 Decree
Final

James H. Gillinwater

March 1. 1885

Entered pages 423-4

J. A. H. Hyatt CC

Enter this

March 26 1886

J. A. H.

The said D. H. Levaey then
paying over and accounting to the
proper persons for all sums
before that time received by
him. It adjudges that D. H.
Levaey recover from defendant
James H. Gillinwater the cost of
the cross bill in this cause. And in
the original cause the execution issued
from upon decrees against said D. H.
Levaey or against him and assigns
perpetually enjoined annulled & vacated
and both causes are dismissed as
to D. H. Levaey.

Jas. Gillemeater Complainant

vs.

Sanders H. Levicy et al Defs

In chy

Sanders H. Levicy this day tendered a bill of review to the decrees of this Court in this cause, and asked leave to file the same, to the filing of which the plaintiff objects, and the motion was argued by counsel. On consideration whereof, the Court is of opinion that, if the last decree in this cause, ~~is~~ rendered the 6th day of December 1879, is a final decree, then it is too late to ~~admit of~~ allow the filing of the bill of review. But the Court is further of opinion that both the decree of 28th of Nov. 1879, and the decree of the 4th day of April 1877 ~~remain~~ are interlocutory decrees, and still remain unexecuted, and the decree of 6 Dec. 1879 did not annul or set them aside. The paper offered as a bill of review is therefore treated as a petition for a rehearing, and as such is allowed to be filed, and a rule is awarded against Gillemeater & H. H. Levacy to answer the same, and the cause is continued.

Gullenwater, or Levisy

Entered page 334

J. H. Styratt
clerk

Enter

In A. K.

Sept 4/83

Chd 60

James Gillenwaters
vs
Samuel H. Levasy et al.

Plff
vs
In chancery
Defts

The order of continuance made in this cause on the 28th day of November 1879, is set aside and the cause came on again this 6th day of December 1879 to be heard upon the papers formerly read in the cause, the rule awarded at the last term of the Court and the answer of J^r Remond to said Rule filed on the 1st day of December 1879, and was argued by counsel on consideration whereof said rule is dismissed, and it appearing to the Court from the report of Com^r Duncan confirmed a decree entered in this cause on the 28th day of December 1879. That he has sold the lands of H. H. Levasy mentioned in the bill it is adjudged ordered and decreed that the sum realized from said sale be placed as a credit on the Plaintiffs Judgement and he may have execution ~~for~~ said Judgement subject to said credit And the cause is continued.

James Williamson
25-3 Decr
H. L. Gray et al

Nov Lun 1879

Entered on Page 71-2

Entered this Decr
J. A. K.
Dec 6th 1879.

James Williamson

vs.

Sanders & Lacey

Deft

3 In chcy.

Deft

The order of continuance
in this case made on the 28th day of November
1879 is set aside and the cause came on
again this day to be heard upon the papers
formerly read in the cause and the ans-
wer of J. St. Redmond to the rule, against
him and Solomon D Owens. returnable
to this term of the Court, and was argued
by Counsel, for reasons appearing to
the Court said rule is dismissed, and
the amount of the sale of said land as
reported by the Commissioner after deduct-
ing the costs and commissions of sale
is directed to be ascertained as a credit upon
the judgement or decree heretofore rendered
in said cause in favor of the Plaintiff
against the said W. W. & Sanders & Lacey
and he may have execution on
said judgement and this cause is
continued

by order of the Court in answer to said rule,

James Gillenwinter
to 3 Decr
Lancaster ¹⁸⁷⁹

Enter this date

Dec 3rd 1879

James Gillenwaters

Plff

vs
3 In Chancery.

Sanders & Lersey et al

Def.

This cause came on this 28th day of November 1879 to be again heard upon the papers formerly read in the cause and the report of C. J. Duncan Special Commissioner in said cause filed on the 13th day of November 1879. and the rule issued in this cause at the last term against Solomon D Owens and Horrey Redmond returnable to the first day of this term. and was argued by counsel. and it appearing to the Court that said report has been filed the time required by law and that there are no exceptions filed thereto said report is confirmed and it further appearing from said Report that James Gillenwaters the purchaser of said land is also the judgment creditor and entitled to the fund for which said land sold the said Commissioner is directed to surrender to the purchaser his said note for the purchase price of said land and make him a deed thereto as soon as he fully pays up the costs of this suit. and leave is granted to the said Solomon D Owens and Horrey Redmond to answer said Rule and this cause is continued until the next term.

James Gillenwater
26 $\frac{1}{3}$ Decer
Sanders St. Larys dot

Nov Term 1879

Entered Page 51.
Jas W. M. Clark.

Enter This decer
J. W. M. Clark.

Nov 28th 1879.

James Gillewaters
 v^s
 Saunders H. Lacey et al

} In Chy

This cause came on this day to be heard upon the papers heretofore read in the cause the decree heretofore entered and was argued by counsel, and it appearing to the court that the commissioner heretofore appointed has not executed the decree of sale in this cause heretofore entered, it is adjudged, ordered after first ~~as before~~ ^{as now} as he can the ^{prior} ~~decree~~ ^{decree} and decreed that he proceed to execute said as therein directed by selling first the land of W. W. Lacey or so much thereof as may be necessary to pay the debt interest and cost, in said decree of sale mentioned upon the terms in said decree specified, and if the sale of the said W. W. Lacey's land in the bill and proceedings mentioned fail to pay the said debt interest & cost in said decree mentioned, he will proceed to sell upon the same terms, and after advertising as in said ~~former~~ decree directed so much of the lands of Saunders H. Lacey as may be necessary to pay the residue of said debt interest and costs upon the ^{same} terms in the former decree mentioned, he shall sell subject to any prior liens upon said land, and will report to this court; And it being suggested that the

and will be subject to any prior liens

land of H. M. Levey first herein decreed to
be sold have been sent to Solomon D
Owens & H. Redmanby said Levey it is adjudged
ordered and decreed that said Solomon D Ow
ens & H. Redmanby be summoned to appear
here at the first day of the next term of this
court to shew cause if any they can why
the amount of said rents shall not be paid
to the commissioner of this court, And to
answer on oath as to the amount thereof
the commissioner will not execute
this decree as to the sale of the lands
of Saunders. H. Levey until after the
rising of the next ensuing term of
this court and this cause is continued.

James. Callenwater

vs. D. D. D.

Saunders, H. Levey et al.

March Term 1849

Cited Page 35

R. W. Brown & Co.

Why sell now?

What of now?

Copy

John H.

Apr 4/49

James Gillenwaters

Plaintiff

vs

B In chey

S H Lacey et al

Defts

This cause came on again to be heard this day upon the papers ~~for~~ read in the case. The orders and decrees heretofore entered the report of C. S. Duncan Special Commissioner filed in said cause on the 15th day of November 1877 and was argued by counsel, and it appearing to the court that said report has been filed for more than 10 days before the first day of this term and that it is unacceptable to said report is confirmed. And it appearing to the court that the entire sum which the plaintiff, by decree rendered in this cause on the 2nd day of April 1877, recovered against the said Sanders H. Lacey and Wm W Lacey is still unpaid and it further appearing to the court that the land directed to be sold to pay the sum mentioned in said decree, since, the redemption thereof has been levied on by James C Scott Deputy for Thomas S Ealy sheriff of Lee County Virginia to satisfy an execution in favor of the Commonwealth, which levy has rendered a sale of said land under said decree of the 2nd day of April 1877, independent at this time. On consideration whereof the court is of opinion that the plaintiff is entitled to have execution against the ^{said} Sanders H + W W Lacey for the sum ^{they were} decreed to pay to him. It is therefore adjudged ordered and

That the Clerk of this Court do execute
in favor of the said James Gillewaters against
Sanders & Levasy and Willbourn W Levasy
for the sum of \$1001.²⁵ with interest thereon
from the 1st day of March 1877 till paid and
the costs of this suit to be taxed by the Clerk
and this cause is continued

James Gillewaters
vs
M Levasy
W Levasy et al

Entered O. B. page 414.

R. W. Orr Jr. Sec.

Enter
paid
Dec 6/77

James Gillenwaters
v.s.

Plffs.

La Chy.

Sanders & N. Levaey et als.

Defls.

This Cause come on this
4th day of Sept. 1877 to be again heard
on the papers formerly read in the Cause
& the report of C. P. Duncan Special Comr.
filed on the 19th Day of Aug. 1877. It appear-
ing to the Court that said report has been
filed the time required by law & that there
are no exceptions thereto, the same is confirmed.
On Consideration whereof & the Court being
of opinion that it ^{would} ~~will~~ be improper for
said Comr. to sell the land in the bill of proceed-
ings mentioned while there is a cloud resting
upon the title ~~until the~~ It is therefore adjudged
ordered & decreed that said Comr. delay the
sale of said land till further orders of this
Court & this Cause is continued till next term.

James Tillman
vs. J. Deane.
S. H. Leacy et als.

Entered page 657
James W. Or clerk

Enter
J. H.
Sept 4/77

James Gillewaters

vs

} In clay

Sanders H. Levey et al

This cause came on this 2nd day of April 1877 to be heard upon the papers heretofore read in the cause the report of H. J. Morgan Court, & ~~was~~ argued by counsel, and it appearing to the court that the said report has been filed the length of time required by law, & there being no exceptions thereto it is adjudged ordered & decreed that statement No. 4, filed with said report be and the same is hereby confirmed, and it is adjudged ordered & decreed that ~~the~~ plaintiff recover of said Sanders H. and W. Levey the said sum of \$1001. ²⁵/₁₀₀ with interest from the 1st of March 1877 till paid, and it is further adjudged ordered & decreed that unless the said debtors or some one for them pay the said sum of money with interest as aforesaid & the costs of this suit within 30 days from this date then L. J. Deane who is hereby appointed a commissioner for the purpose sell so much of the interest of the said debt in the land in bill mentioned as is necessary to pay said debt interest & costs aforesaid on a credit of six, twelve and eighteen months with interest from day of sale, except as to the costs of the suit, costs & commission of sale which shall be paid in cash, the commissioner will advertise the time & place of sale by posting notice thereof at the front door of the court house & in at least one place in the neighborhood

11.81
 193
 13.74
 2.60
 16.24

James Killebrew
 vs J. B. B. B.
 Sanders & Halsey et al
 March Term 1877
 Entered page 636.
 James W. Orr. clk.

Enter
 J. A. K.
 Apr 5/77

of the land for thirty days before the day of sale
 notifying of the time place & terms of sale.
 The commissioner will take bond of the purchaser
 with good personal security & retain the title
 until the purchase money is fully paid & he will
 report his action to this court & this cause is
 continued.

James Stillwaters Plaintiff

vs

In Chancery

Sanders H Lacey et als Defs

8th day of December 1876

This cause came on this day to be again heard upon the bill of complainant and exhibits filed therewith, the demurrer of Defendants and joinder therein, the answer of the defendants S H Lacey W. H. Lacey and Andrew Lestament and general replication thereto ~~the~~ depositions of witnesses and was argued by counsel on consideration thereof the court doth overrule the said ~~demurrer~~ and upon further consideration thereof and for reasons appearing to the Court it is adjudged ordered and decreed that the contract or sale of land made by the defendant Sanders H & W H Lacey to the Plaintiff James Stillwaters on the 23rd day of November 1873 be and the same is hereby cancelled and annulled, that the said Sanders H Lacey be and he is hereby perpetually enjoined and inhibited from any further proceeding to collect the said judgment obtained by him for the benefit of Andrew Lestament against the complainant on the note which became due and payable on the 1st day of October 1874. That he and all other persons be and they are hereby perpetually enjoined and inhibited from collecting the balance of the said bond of indenture

by said billmeters to said Sanders & Leroy
which become due and payable on the 1st day
of April 1874 and that he and all other per-
sons be alike enjoined and inhibited from col-
lecting the said bond which become due and
payable on the 1st day of October 1876, and that
the said Defendant Sanders & Leroy deliver
up the two last named ^{the clerk of this court to} ~~documents~~ ^{to be filed}
~~them~~ with the papers of this cause for cancella-
tion and ~~it appearing to the court that said~~
complainant ^{claiming that he} had paid to the defendants be-
fore the institution of this suit the sum of
\$895.00 and ^{it being admitted that} ~~that~~ he has enjoyed the use and
benefit of said land since his purchase there-
of the court is of opinion that an account
is necessary to show how much is due to said
complainant on account of his payment on
his said purchase it is therefore adjudged
ordered and decreed that Henry J. Morgan
one of the commissioners of this court after
giving due notice to the parties proceed to take
state and settle the account between the parties
taking into consideration the sum paid by
the plaintiff to the defendants and the inter-
est thereon the permanent improvements
which he has made on said lands, if any, and
the value thereof and charging him with
the rents and profits of the land during

the time he has occupied the same and
anything else which he may deem
material to be stated and he will re-
port his proceedings to the next term of
this court till ~~which time this cause is~~
~~continued~~ and it is ordered that on or before
the 1st day of March next, the plaintiff surrender
to the defendant W.W. Levasy, the possession of
the premises in controversy, and the Commissioner
will calculate its rents to that period, and ~~the plaintiff~~
~~shall load of the said W.W. Levasy~~ and This cause
is continued

James Sullivan

vs. 3 Decr

S. H. Livingston et al

Entered Order Book

Page 597

R. W. Orr Jr. D.C.

Enter

J. A. H.

Dec. 8/96

James Gellumwaters

vs

See chancery

S. H. Leracy et al

This cause came ~~on~~ on this 6th day of April 1876. On motion of Complainant leave is given him to file his replication to the answers of S. H. Leracy W. B. Leracy and Andrew Lestament and thereupon he replies generally to the said answers, and joins in the demurrer filed; and on his motion the depositions of Herald S. Gellumwaters Solomon Owens John Osborne and John A. Moore are superseded and leave is granted the said Gellumwaters to retake the same and this cause is continued to the next term.

James Gillenwaters
vs. 3 Decree
Sanders H. Leracy & ds
Entered Order Book
page 515.
James W. Orr, Clerk.

Enter this Decree
April 6. 1876
J. A. K.

James Gillumwaters Plaintiff
vs. Sanders & Leracy et als. } In Chancery.

The Plaintiff in this cause having by his bill prayed that Sanders & Leracy, his agents ~~attorneys~~ and assigns and each of them be enjoined and inhibited from the collection of three several notes executed by the Plaintiff to said Sanders & Leracy on the day of 1873 for the sum of \$500⁰⁰ each. The first of which notes became due and payable on the day of 1874. The second became due and payable on the 1st day of October 1874 and upon which the said Sanders & Leracy for the benefit of Andrew L. Tammant has brought his suit at law now pending in the Circuit Court of Lee County Virginia and on which the plaintiff shall confess judgment at law. The third and last of which notes is to become due and payable on the 1st day of October 1876. The Court therefore upon the confession of the judgment aforesaid and upon the Plaintiff executing bond in the sum of \$1000⁰⁰ with good security grants the Plaintiff a ~~restraining~~ injunction against the defendants and each of them their agents assigns and attorneys from collecting the judgment hereby confessed. The balance still due on the 1st mentioned note and the note which is to become due and payable on the 1st day of October 1876. and each and every part of them or either of them when the Plaintiff shall execute the bond.

James Gellumwater
vs { order granting
{ an injunction

Sanders & Livacy et als

Entered order Book page
455 + 456.

James W Orr, Clerk.

Enter
in S.A.R.

Sept 3/85

him in requirice of him with sufficient security before
the Court of this Court. Then the Plaintiff shall
have the full benefit of this injunction.

Commissioners Office Knoxville 16th March 1877.
James Gillenwaters Deft }
vs. } Indelby,
S. H. Livesay & al Deft }

The deposition of James Gillenwaters John R. Babb. Daniel Roberts and others taken on the 16th of March 1877 at the time of taking an account of payments rents & improvements referred to in a decree in the above cause entered on the 8th of December 1876.

The said Gillenwaters being sworn deposes and says In 1873 I bought of S. H. Livesay the land in this bill and proceedings mentioned for which I was to pay \$2000.00

In January 1874 the day of the month not now remembered I paid to S. H. Livesay & through my brother William Gillenwaters of Scott County the sum of \$500.00 in horses at cash prices, at the time these horses were delivered said S. H. Livesay and W. H. Livesay were both present, and for this sum no note or bond was given.

In March ~~1874~~ I paid or April 1874 I made a further payment of \$290.00 \$270.00 of which was paid to S. H. Livesay, and \$20.00 the residue was paid to W. H. Livesay, but S. H. Livesay was present at the time I paid the \$20.00 to W. H. Livesay, and directed me to pay it to him.

B H Hagan Esq
Please Give Mr
Gillman \$500 And
Ship me this
2nd day Nov 1875
What W. W. Loring
A R. Surgeon W. L. Loring

In April 1875. I paid to a man by the name
^{Thomas} of Bremen \$100.00 who held one of my notes given
for said land and to whom the same had been
assigned or delivered by S. H. Livesey

In March 1875. I paid W. H. Livesey \$5.00 and
this payment was made in this way. One of
my notes had been delivered to Mr Hagan for
suit and on the 24th of March 1875. Mr W. H. Livesey
directed Mr Hagan to give me credit for said
five dollars, and the order for this purpose
is hereto attached as a part of this deposition

These credits due the \$500.00 will I think
all be shown on the notes given by me if the
defendants will produce them but the dates
may not be stated exactly correct.

I got possession of the land about the 12th
day of February 1874 and from that time down
to March the 1st 1877. is three years and about
16 or 17 days. During the first year the
land was not profitable, but taking the
same upon an average for said period, I think
the same worth per annum about \$70.00 and
no more.

As to permanent improvements I think I have
cleared about 15 acres of new land which I think
is worth at least \$100.00. The land was pretty
heavily timbered and required a great deal
of labor to fit it for cultivation.

During said period I have built and erected upon said land a Cabin House and Corn Crib which I think was and is well worth \$50.00 The Cabin House is a one story building 18 feet square built up out of round logs, scalped down on one side within, and covered with boards nailed on.

The Corn Crib is made out of split Timber smoothed on the inside, is 20 feet long, 7 or 8 wide, and some 8 or 10 high and covered with boards held down by poles.

I have laid a line of wooden pipes to conduct the water to my house about 540 or 550 yards and in doing this work and hiring it done I think I have expended about \$75.00 at the least and I think it has added to the value of the land double that sum, for until that was done there was no convenient water.

The principal parts of said Pipes are made of cedar, which I hauled or had hauled about 1 1/2 miles, and the residue thereof is chestnut.

During said period I bought \$20.00 worth of improved fruit trees and set them out on said land nearly all of which lived and are now doing well and they have now had two years growth and this improvement I think is now worth at least \$40.00.

To the House in which I live I have put a lightning rod which costs me \$7.00 I think it is worth the sum.

I have made and laid up about 7500 new rails which I think is worth \$15.00

I have ^{paid} the Taxes upon said lands for two years but the exact amount I do not know, but think it ^{will} amount to near \$14.00 The land was assessed in Levesays name but he said I must pay the taxes which I did but it was in his name and the amount I so paid was or ought to have been credited on his ticket

I bought about 650 feet of plank for the purpose of me laying one of the floors in the house and paid for the same \$6.50 in cash. Out of this plank I had a batten door shutter made & some facings to the door put up which is worth about \$2.50, and this and what I paid for the plank, will make about \$9.00, the plank now used in making said door shutter and facings, is still there on the premises.

And further this witness saith not.

James Gillenwater

The said John R. Babb being sworn says

I know nothing about the door shutter facing plank or taxes spoken of by Mr Gillenwaters but I know the fact that he has made some new rails but the number or value I do not know.

The customary price for making and putting up new rails is one dollar per 100.

I know the Jeff bought and put a lightning rod to the house, but what it cost, or its value,

Geo. R. Babb. 1 day as witness for Peff. 50

Daniel Roberts witness
for Peff. 1 day. 50

I cannot state, I know the Peff purchased
and set out fruit trees but do not know what
they cost. I think they are now worth \$35.00

I know the Peff brought water to his house
^{in pipe logs}
some considerable distance, and think that
improvements would have cost about \$70.00 and
I think it is - really worth that sum to the
premises

As to the Rabbit House and Corn Crib spoken
of by Mr. Gillenwaters I know that he had
them put there, and my estimate of
their value is \$35.00

As to the clearing of land, I do not know
the quantity cleared by the Peff but there
is a considerable area of the same. And in
looking over it after it was cleared my
estimate of the value of clearing it is about
\$80.00

I am well acquainted with the land in
controversy in this suit. And in the condition
in which it has been since the Peff has
been in its possession is, that it is reasonably
worth about \$72.00 per year

And further this witness saith not.

John R. Babb

Daniel Roberts being sworn says I have just
heard read the deposition of Mr. John R.
Babb. and I now hereby adopt all his statements

as and from my deposition in the premises
and hereby reiterate the same as if again
written out at length

And further this witness saith not
 Samuel Roberts

Virginia Lee County Tourist

The foregoing depositions of James Billenwaters John R Babb. and Daniel Roberts were taken before me sworn to and subscribed by them at the time and place mentioned in the Caption

Henry J. Morgan Jones

James Gillmanwater

22 } 1890

W. D. Lucey, pul

Alc.

The deposition of John A Moore John Osborne
taken before me ~~Stokely~~ ^{a Justice of said County,} ~~Lewis~~ at the dwelling house of
John A Moore in Lee County Virginia on the 11th day
of August 1876, pursuant to notice hereto attached
which depositions are intended to be read as ev-
idence on behalf of the plaintiff in a suit in
chancery now pending in the Circuit Court of Lee
County Virginia in which James Gillenwaters is
Plaintiff and Sanders & Leray and others are
defendants. the plaintiff and, W^m W^m Leray
~~St. Leray~~ ^{Andrew Testament} there
and of the defendants being present

John Osborne a witness of lawful age being
first duly sworn deposes and says.

Question by complainant. Were you present at the
time W. W. Leray executed his title bond to James
Gillenwaters, if so, did Gillenwaters give up to them
the ~~bond~~ title bond of St. Leray? and at
that time, ~~what~~ did the said Lerays repre-
sent the title to said land?

Answer I was present when W. W. Leray executed his title
bond to said Gillenwaters. I don't know whether Mr
Gillenwaters gave up to St. Leray a bond executed
by him to said Gillenwaters or not, and W. W. Leray
at that time represented the title to ~~said~~ land
to be good.

Question by Defendant Did you I not see that time
~~say~~ to Mr Gillenwaters that if he had any
doubts about the title to said land that I would

take it back and repay to him his money?
Answer, by Witness. At that time W^m Leary told Mr Gillen-
waters that if he had any fears about the title to
said land that he would take it back and repay
him his money?

Question by complainant Did he propose to pay
the money to Mr Gillenwaters at that time or
did he want Mr Gillenwaters to give him
time?

Ans. I dont recollect anything about that.
Question by Defendant ~~S. H. Leary~~. Did I
I not at that time pay some money to W^m Leary
in your presence,

Ans. Yes Sir I saw you pay him some money but
do not know the amount. nor what for
And further this deponent saith not.
John Osburn

John A Moon another witness of lawful
age being first duly sworn.

Question by Plaintiff. Now you present when I
purchased the land, now in dispute if so to
whom did I execute my notes and who found
~~himself to be~~ said land to me?

Answer. My best recollection is that I prepared the notes
for Gillenwaters and the bond to him. and my
best recollection is that the bond was executed
by S^t Leary and I think the notes were
made payable to him. my recollection standing

at the time was that at that time ~~S~~ Lerasy was holding this land to secure him from harm as the security of W. W. Lerasy in a bail bond to the United States Government and I suppose the notes were taken ^{to himself} for the same purpose. Question by same. How did S. H. Lerasy and W. W. Lerasy represent the title to said land?

Answer. W. W. Lerasy represented the title to be good. I do not recollect approving W. W. Lerasy say any thing at all in reference to the title. I have heard W. W. Lerasy say often since that the title to said land was good.

Question by same. Were you present when James Gillenwaters gave up the bond of S. H. Lerasy and took the bond of W. W. Lerasy, if so please state as nearly as you can all that occurred at that time.

Answer. I was present at the time the bonds were exchanged. Mr. Gillenwaters seemed very reluctant to exchange said bonds. he expressed fear of the unsoundness of the title to said land and if the title was not good he looked upon the bond of S. H. Lerasy as being better to him than W. W. Lerasy's bond would be. but after the repeated assurances of ~~persons~~ those present that it would all be right he Gillenwaters gave up the bond of S. H. Lerasy and took that of W. W. Lerasy.

Question by same. Did you ever hear any other

conversation between W H Lacey and Gillen
waters in reference to this land if so please state
what it was?

Answer. I at one time went with W H Lacey to see Mr
Gillenwaters in reference to the matters between
them. Mr. Gillenwaters then proposed to Mr Lacey
to take the land back. but Mr Lacey stated
that he could not pay him the money back
that he Gillenwaters had paid to words said
land unless he would give him time but
the time which he proposed was longer than
Mr Gillenwaters said he could wait. This
was after the bonds were exchanged.
And further this deponent saith not.

John A. Moore

Virginia Lee County Court

I, Stokely Lawson a Justice of the peace in and
for said County do certify that the foregoing deposi-
tions were taken sworn to and subscribed before
me ^{and for the purposes} at the time and place mentioned in the
caption and that by consent of parties they
were reduced to writing by C. T. Duncan.

Given under my hand this 11th day of August
1876

Stokely Lawson J. P.

The further taking of depositions in this
cause is by consent of parties adjourned to
the law office of Morrison & Ayers in Vestal
ville Va on Friday the 26th day of August 1876
Given under my hand this 11th day of August 1876

Stokely Lawson J. P.

Filed Aug 29th 1876 J. W. M. Clerk

Page. (1)

The Deposition of ^{and others} Stokley Lawson,
Taking before me Thomas. McPherson, a Justice of the
peace for the County of Lee pursuant to a Notice
herunto annexed, at ^{the} dwelling house of Thomas. McPherson
on the 6th day of March 1876, to be read as evidence
on behalf of Wm. W. Levisay, in a certain action in
equity depending in the Circuit Court for the County
of Lee. Wherein James. Gillenwaters is plaintiff and,
Wm. W. Levisay is defendant,

Stokley Lawson, a witness of law-full age
being duly sworn deposes and saith

Question by Plaintiff Levisay,

was you present at the time that S. H. Levisay
lifted his bond from James. Gillenwaters and
Wm. W. Levisay executed his bond, to said Gillenwaters
and if so go on and state what conversations took
place between Wm. W. Levisay and James. Gillenwaters
in regard to the title to the land that said
Gillenwaters purchased of said Wm. W. Levisay.

Ans by witness

I was present at the time said Levisay &
Gillenwaters canceled their bonds, and also
there was some conversations between Wm. W.
Levisay and James. Gillenwaters, in regard to the
title of said land and Wm. W. Levisay told
Mr. Gillenwaters if he had any fears of the
title of said land he would take the land back
and pay him his money, back, and further this
deponent saith not, Stokley Lawson

S. H. Levisay another witness of lawful age being duly sworn deposes and saith,
 Question by the plaintiff,

did you or not have any thing to do in regard to selling the land in controversy to James Gillenwaters if so go on and state what, what you had to do with it,

Ans by witness

I had nothing to do with selling ^{the land} more than executing my bond to said Gillenwaters for a writ. The title at that time was in me. Wm. W. Levisay made me a deed to the said land to secure me as his security at Abingdon he was at that time in suit at Abingdon and when he was released I had nothing more to do with the land, and I also lifted my bond from James Gillenwaters and Wm. W. Levisay executed his bond in the place of mine and I also made Wm. W. Levisay a deed back to the land,

Cross examination by defendant

Question by defendant Gillenwaters

did you or not come to me to get me to exchange bonds.

Ans by witness I did, from the fact that Wm. W. Levisay was released from his ~~liability~~ ^{liabilities} at Abingdon and that the land was only in my hands to secure me as his security
 Question by the defendant,

at the time you come to me to get me to exchange bonds did I or not tell you that I did not want to do it until I got some instruction in regard to the writ of said land

Ans by witness

you stated to me at the time I went to get you to take Wm. W. Levisay bond in place of mine that you did not want to do it until ^{I you said you} got some advice in regard to the writ to said land, I had understood that they was some doubts in regard to the title of said land.

Question by same,

did I or not tell you at the time you ask me to change bonds that I would go and get council against a certain day, and if I got council to satisfy me that the title was good, I would exchange bonds.

Ans by witness, I think you did state to me at that time that you would go and get council and if you found the title was good you would change bonds, and also we met on the day we set to meet, and Mr Gillenwaters refused to change bonds, from the fact that he had not got ^{council} ~~instruction~~ sufficient to satisfy him that the title was good, but after some conversation Mr Gillenwaters did agree to exchange bonds. I then ^{made} ~~agreed to make~~ the writ back to Wm. W. Levisay, and then we did exchange bonds,

and further this deponent saith not,

J. H. Levisay

Andrew Testament, another witness of lawful age being duly sworn deposes and saith.

Question by plaintiff Levisay

was you or not present when James Gillenwaters and Wm. W. Levisay and S. H. Levisay had a conversation in regard to changing bonds, and if

so please state what that conversation was.
Ans by witness

They was some talk between said parties in regard to the right to said land and Wm. W. Levisay, to Mr Gillenwaters if he had any fears of the right to said land he would take the land back and pay him his money back.

Question by same.

did you or not have any thing to do with selling the land, in contraversion to said Gillenwaters

Ans by witness

I did not, and further this deponent saith not. Andrew ^{by} Testament.

The taking of said depositions is postponed before Estokley, Lawson, a justice of the peace, for the county of Lee at the same place and on the 6th day of March 1876, given under my hand this the 6th day of March 1876

Thomas, McPherson, S. J.

Thomas McPherson another witness of lawful age being duly sworn deposed, and said

Question by plaintiff Levisay

was you or not present when S. H. Levisay lifted his bond from James Gillenwaters and Wm. W. Levisay, give his bond to said Gillenwaters for a right to said land, and if so go on and state what you understood about it

Ans by witness.

I was present at the time they changed bonds and they was some conversation in regard to the

wright to said land and Mr Gillenwaters
seemed to be a feard. of the title to said land
and Wm. W. Levisay to Mr Gillenwaters that
if he had any fears of ^{the} wright he wood take
the land back and pay him his money back.

Cross examination.

Question by defendant. Gillenwaters
did or not I tell you and others that I was
afraid of the wright to said land

Ans by witness

you told me that you was not satisfied
with the wright in condition it was in and
after me and others persuaded you that the wright
was good you then did agreed to take Wm.
W. Levisay. bond. in place of S. H. Levisay bond.
and alsoe Wm. W. Levisay told Mr Gillenwaters
at the time they changed bonds. that he had no
fears of the wright still

and also further this deponent saith not
Thomas. McPherson,

Virginia, Lee county, to wit.

I Thomas McPherson a Justice of the Peace in and for the
County and State aforesaid, do certify that the foregoing
depositions of Stokely Leason, Andrew Testament & S. H. Leacy.
were taken, subscribed and sworn to before me, at the time
and place and for the purposes in the Caption mentioned.
Given under my hand this 6th day of March 1876.

Thos. McPherson. J. P.

Defts costs
6.80 to Jan'y 1877.

Wm W Leracy

ads { Depositions

James Gillinwaters

Recd from Thos McPherson

P. P. & filed Nov 20th 1876.

James W Orr, Clerk.

18 74 4 23

18 74 4 1

500

168

50168

270.00

231.68

21.00

211.68

84572

105

9.51

|||||

Justice McPherson \$2.00

" Lamson

Witness " .50

" Lestonout .50

" B. H. Leracy. .50

Virginia:

Lee County to wit:

This day J. H. Redman personally
came before me the undersigned
and made oath that the copy hereto
annexed was the only service or
copy that was ever made upon
him of the rule awarded in the
Chancery cause of James Gillum v
vs Sanders, H. Levey et als, and that
no other copy or service of said
rule was ever made upon him
affiant further states that Solomon
Crews is dead died some time
in March or April, 1879

Given under my hand this the 28th
day of November 1879

James W. Orr. Clerk.

James Gillenwaters
vs 3 Affidavit
Sanders & Levee et al

James Gillenwaters

Plffs.

vs.

In chancery

Sanders H Lacey et al

Defendants

The undersigned who was appointed by a Decree of your Honors Court rendered and pronounced on the day of March 1877. a commissioner to sell the interest of H. W. Lacey in the tract of land in the bill mentioned would respectfully report that in pursuance of said Decree he advertised said land for sale on the day of July 1877. But that before the day came an said land had been levied on by James B. Scott one of the deputy Sheriffs of said County to satisfy a judgment in favor of the Commonwealth, vs H. W. Lacey late Sheriff of said County, and his sureties in his official bond as Sheriff as aforesaid. As a cloud was thus thrown upon the title to said land your Commissioner was of opinion that said sale should be postponed until the Sheriff had had time to proceed under his judgment or at least for the time being.

all of which is respectfully submitted

C. F. Duncan Court.

James Gillenwaters
vs ~~Report of James~~
~~Duncan. vol.~~
S. H. Leracy et al.

Filed Aug 17th 1877.
James W. Orr. clk.

James Gillenwaters

Plff.

vs.

John Chey

Sanders & Linsay et als.

Defts

To the Hon John A. Kelly Judge of
the Circuit Court of said County.

The undersigned who was by a former
decree of the Circuit Court of Lee County Virginia
in directed as commissioner to sell so much
of the interest of W. W. Linsay in the land in
the bill and proceedings mentioned as
would be sufficient to pay the sum decreed
to the complainant being \$1001.25 with inter-
est till paid and the costs of suit and
commissions of sale, at the last term of
this Court reported the fact, that since the
 rendition of the decree aforesaid, that said
land had been used on to satisfy an execution
in favor of the Commonwealth vs. W. W.
Linsay and others his securities in his bond as
late Sheriff of said County, and that such an
execution created a cloud upon the title of said land, and
that it was impractical at that time to sell
the same, Your Commissioner now begs
leave to report that said land still exists
and that the judgment of the Common-
wealth aforesaid seems to constitute a
prize lien upon said land which per-
haps will exhaust the whole thereof
under the circumstances, The money

and every part thereof being still unpaid
your Commissioner is of opinion that
an execution should be ~~issued~~^{issued} on said
said decree against the said Sanders
& W. L. Lacey and the money made out
of their personal estate

All of which is respectfully
submitted.

L. T. Duncan
Commissioner

James Gillenwaters

vs. Lacey's Report

S. L. Lacey et al.

Filed Nov-1st 1877.
Jas. W. Orr, Clerk.

Commissaries Office Knoxville 10th March 1877
James Ellenwaters Peff

vs.

S. H. & W. W. Liversay

Defts

In Chancery

To the Hon John A. Kelly Judge of the
circuit Court of Lee County.

In order to take an account of payments,
of rents and profits, and of permanent im-
provements directed by a decree in this
cause of December 1876. I attempted to give
the parties, (that is the Peff and Defts W. W. Liversay)
such notice as is shown by the paper here filed
marked (A B) One copy of which was sent
by mail to each, but Mr Liversay subsequently
informed me that he did not receive the notice
in time to attend at the time and place
indicated, while the Peff did attend and,
brought with him two witnesses John D. Babb
Daniel Roberts whose depositions with that
of the Peff I reduced to writing on the 16th
of March 1877. and herewith file the same marked
(A C) and by reference thereto it will be seen that
as between himself, and his two witnesses with
reference to rents and profits, and permanent
improvements, there was not a great difference
of opinion between the peff and them touching
said two matters, but as to these two equities
as we shall presently see these depositions

have nothing to do. And the only purpose they can serve is to show the payments made by the Deft to the dfts, and Mr Gillewater alone testifies in relation to them in the first part of his deposition.

As the dfts were not present when said depositions were taken I continued the matter until the 19th of March, and again notified them to be then before me with their proof, and accordingly W^m Liversay with three or four made their appearance, and I thereupon soon found that there would be a wide difference of opinion between these witnesses and those of the Deft in regard to rents and profits and the value of permanent improvements.

To avoid a wide conflict in the testimony and to save the labour time and expense of taking the depositions of many witnesses, I advised the parties to mutually select three competent and disinterested gentlemen to go upon the land, look at its quality, and at the improvements, and let them fix the value of each, and that they should then abide by the estimate of such witnesses. To this proposition they readily assented, and I thereupon prepared such Submission ⁱⁿ naming ^{it} the three gentlemen which they signed and is now herewith filed as a part of this report marked (A D) to which

is attached the estimated value of the rents and profits, and permanent improvements as fixed by said three persons:

We now come to the enquiries and matters to be reported on, the first of which is, as to the payments made by the Deff to the defendants toward the purchase price of the land in the bill and proceedings mentioned.

The only witness who testifies in relation to payments, is the Deff himself, and from his statement it appears, that at different times and in different ways, he has paid to the defendants and their assignees the sum of \$895.00 toward the purchase price of the land.

I now file herewith another paper marked (A E) on which there are four separate statements.

The first is a statement of the several items of payment, and where the precise date is not given and the month in which it was made is given, in such case I have put each item down as if paid the last day of the month named.

The second shows the rents and profits of the land for 3 years and 16 or 17 days commencing Feb. 12th 1874 and ending March the 1st 1877 amounting to \$197.71

The third is a statement of the permanent improvements placed thereon during said period amounting in the aggregate to \$162.50 And

The fourth is a stated account between the parties showing the balance due the plaintiff on the first day of March 1877.

In this statement, interest is counted for the Plaintiff from the time of each payment until March 1-1877. but no interest is calculated on the improvements, and on the rents, interest is counted for the defendant from the end of each current year to the first of March 1877 at which time the account thus adjusted there was due the Plaintiff for the balance of payments and improvements the sum of \$1001.25

Since making said four statements, I thought it possible that you might prefer to adjust these matters, without calculating interest either way, and if so such view will be met, by Statement No. 5 on said paper, and if that statement shall be adopted, then the defendant will owe the Plaintiff \$859.59 March 1-1877.

Neither party has required of me any special statements and I know of nothing special to be referred to.

All which is respectfully submitted

Henry Morgan Lewis

James Gillenwaters
vs. } Com's Report

S. H. Livesey & al
Filed Nov 21st 1877
James W. Orr, clk.

Commissioners fees \$12.00

To the Honorable John A. Kelly Judge of
the Circuit Court of Lee County Virginia
Pursuant to two decrees entered in the
Cause of James Gibbenvater against San-
ders H. Lewis and others, now pending in
the Circuit Court of Lee County Virginia. One
of which decrees was entered on the 5th day of
April 1877 and the other on the 4th day of April
1879. The undersigned Commissioner appointed
for the purpose, pursuant to the terms of the
Decree first aforesaid, on the 1st day of Sep-
tember 1879. That being court day offered for
sale the interest of the said S. H. & H. W. Lewis
in the lands in the Bill and proceedings ^{mentioned} as
would be sufficient to satisfy the said Decree
of the 5th day of April 1877. Said Sale was made
on a credit of six months & eighteen months
except for costs of suit & commissions of sale
which was to be paid down, after having
advertised the time place and terms of sale
for more than 30 days at three public
places in said County one of which was
the front door of the Court House of said County
and at said Sale James Gibbenvater the Plaintiff
in said suit became the purchaser, he be-
ing the highest and best bidder, at the
price of \$500. of which sum, \$65.75⁰⁰ was costs
of suit and commissions of sale, which

was deducted from the amount of sale being
the sum of \$434.35. This sum your commis-
sioner, divided into three equal installments
amounting to \$144.75, for which he took the
said James Gibbwater's note with John
Roberts for Security, due respectively in
Six, Twelve & Eighteen Months. The Security in
these notes is not only good, but as the whole
of the proceeds of the sale are due and going to
the said Gibbwater, your Commissioner
deems said Security ample and Sufficient.
The said purchaser did not pay the whole
amount of the costs down, but he had before
the day of sale paid to the Clerk, his costs, amount-
ing to \$13.94 and to the Sheriff his costs amount-
ing to \$2.50 and for the balance of the costs & commis-
sion of sale he executed to me as Commissioner his note
for \$49.50 which is very good as there is good
note in my hands for collection amounting
to upwards of \$400.00 belonging to said Gibb-
water, out of which he has directed me to
obtain enough when collected to pay the bal-
ance of said costs. An arrangement which
I deem satisfactory.

The above Sale is in the opinion of your Com-
missioner so good a one as can be made
under the circumstances, as the interest of
land sold by me is only a life estate and

upon that there is a judgment lien of about
\$100.00, of which the purchaser had full no-
tice and to which he bought subject, and
will have to pay. Your Commissioner there-
fore recommends the confirmation of said
Sale -

Respectfully Submitted,
Oct 6th 1879. W. F. Duncan, Commr.

James Hillen
vs ~~Report of~~ Report of
by Comr. Duncan
J. H. Lewis et al

Filed for 13th 1879.
James W. Orr. Clk.

Commissioners Office Jonesville Va. Nov. 5 1884.

Sanders H. Leway

Peff

vs.

On a Bill of Review

James H. Gillenwaters ad. Defs.

To the Hon. John A. Kelly Judge of the Circuit
Court of Lee County Virginia:

In order to execute your decree in this cause on
the 27th day of Aug 1884. I caused to come before me on
the 5th day of Nov. 1884. S. H. Leway, John T. Leway, Stokely
Lawson and Fielding Testament, and I took their depositions
in writing bearing on the equities involved in the cause
and file herewith the same marked (A B)

The defendant James H. Gillenwaters did not have any
notice of this my proceeding, but I did notify Mr. J. Duncan
one of his attorneys of the fact that I was about to proceed
in the premises and requested him to be present, but
the information I received from him was that he would take
no further interest in the matter.

The business transaction which gave rise to this suit,
is so fully and clearly set out in the deposition of said S. H.
Leway, that I deem it altogether useless and unnecessary
waste of time proper and labor to again state the facts.
I shall therefore only give my conclusions based on such facts.

I am of opinion from the evidence that S. H. Leway did receive
of James H. Gillenwaters some \$200. \$300 - or \$400. - of the purchase
price of said land and that the same was a part of the notes
of \$1500.00 executed by Gillenwaters to S. H. Leway

I am also of opinion that at the time W. W. Levasy executed his title bond to James Gillenwaters and the latter surrendered the title bond which he held on S. H. Levasy to him, that said S. H. Levasy then and there turned over and surrendered to said W. W. Levasy the residue of the \$1500, notes and that he at the same time and place said S. H. Levasy paid to W. W. Levasy all money which he had before that time received of James Gillenwaters toward the purchase price of said land, whether the same was \$200 - \$300 - or \$400, or if he did not pay it in money that he did in some way account for the same so as to satisfy W. W. Levasy on that score.

As to the residue of the purchase money for the land the evidence shows that James Gillenwaters executed his bond directly to W. W. Levasy for \$500.00 for said balance, and this note was to be discharged in horses; and the evidence further shows that this note was paid in horses directly by Gillenwater to W. W. Levasy; I am therefore of opinion that S. H. Levasy was not at any time chargeable with any thing to any body on account of said horses.

I am likewise of opinion from the facts of the case as they now appear to me that this whole transaction in a court of equity ought to be treated as a business transaction between Jas. Gillenwaters and W. W. Levasy and if correct in this, and in the fact

that S^t. Levasy has fully accounted to W^m. Levasy for
Horses and all money recd, by him on account of the
notes of \$1500.00 executed to him and then turned over
said notes to W^m. Levasy, then it would seem to
follow as a natural consequence that said S^t. Levasy
had no interest whatever in the land and had
nothing whatever to do with rents profits or improvements
and that these were matters in which Gillemeater
or W^m. Levasy were alone interested; And entertaining
the views already expressed I thought it unnecessary
to enter ^{upon} or institute any enquiry in relation to rents
and profits, or permanent improvements:

All which is respectfully Submitted

Henry J. Morgan Comr.

Nov. 5 1884,

Sanders H. Leasing

vs. } Cummings Report

James H. Gillewaters

Filed Nov. 12th 1887

J. A. Hyatt C. C.

Cummings - see p. 50

S. H. Levasy

Poff

vs.

On Bill of Review

Jas. H. Gilmwaters vs. Defts

The deposition of Fielding Testament. S. H. Levasy
John T. Levasy & Henry Lawson taken on the 5th day of
Nov. 1884 before the undersigned court. to be used as
evidence on the part of S. H. Levasy at the time of taking
an account ~~therein~~: and making a report in the above
stated cause:

The said S. H. Levasy — a witness of lawful
age being duly sworn says:

The United States some years ago, instituted
a criminal prosecution against W. H. Levasy and was
about to lodge him in jail, and to avoid this, he
asked me to go his bail, and I refused to go his
bail, unless he would indemnify me against any
loss I might sustain on that score. And to do that
he conveyed to me the land in the bill of proceedings
mentioned, and although this conveyance appears
to be absolute, yet both parties understood it to
be nothing more than a mortgage:

Notwithstanding this transaction while the title to
said land was in me, said W. H. Levasy undertook to
sell said land to Jas. Gilmwaters and did so, and
after they had agreed on terms. They both came to
me and wanted me to execute my title bond to said
Gilmwaters for a title to the land when it should
be paid for. And I at first declined to do so, but
afterward did ~~the~~ execute such bond, with this con-

-dition, that as soon as W. W. Leeway should get clear of said prosecution, I was to convey said land back to W. W. Leeway, and he was then to execute his title bond to said Gillingwaters for said land, and the latter was to surrender my title bond to me, and this arrangement was carried out, after said prosecution was ended.

At the time I executed my said title bond to Gillingwaters I was still W. W. Leeway's security as his bail, and to guard my own interest in the matter I required said Gillingwaters to execute to me his bonds as purchase money to the amount of \$1500.00 and ^{for} the residue of the purchase money of \$500.00 said Gillingwaters executed his bond to said W. W. Leeway payable in Horses.

When this last note or bond fell due, at the urgent solicitation of W. W. Leeway I went with him to receive said Horses in discharge of said note, and W. Gillingwaters ^{a brother} ~~the father~~ of said James, ^{and I,} valued the Horses between said James Gillingwaters and W. W. Leeway, and said Jas Gillingwaters then ~~then~~ paid W. W. Leeway said \$500.00 note in Horses, and I never owned one of them or had any interest in them. It is true said Horses were brought to my house (but not as my property) and they stayed there for a few days, when W. W. Leeway sent his sons after them, and I delivered the same to them.

While I held said Jas Gillingwaters notes for said \$1500- he paid me some money thereon, but the amount of money so paid me I do not now remember. It is possible that it may have been some \$200. \$300- or \$400-

After I had re-conveyed said land to W. W. Levasy, and he had given his land to Jas. Gillenwaters for a title, and Jas. Gillenwaters had surrendered my title land to me, in accordance with our agreement. I then turned over to W. W. Levasy the balance of said lands in Jas. Gillenwaters, and I also paid to him all the money I had received of said Gillenwaters whether \$200 or \$300 or more.

These transactions were all had and transacted before Jas. Gillenwaters filed his original bill against me and others. These notes and money were turned over by me to W. W. Levasy the same day that he executed his title land to said Gillenwaters.

And further this witness saith not.

W. H. Levasy

John J. Levasy a witness of lawful age being duly sworn says.

I am the son of W. H. Levasy, and I know the fact that the money paid by Jas. Gillenwaters in discharge of the \$500.00 note given by him to W. W. Levasy was delivered by my father to him as stated by him in his deposition.

And further this witness saith not.

John J. Levasy

Stokely Lawson another witness says.

I was present at the time W. H. Levasy re-conveyed said land to W. W. Levasy and at the same time W. W. Levasy gave his title land to Jas. Gillenwaters and the latter surrendered the title land which he held in W. H. Levasy to him, and at the same time said W. H. Levasy turned over to said W. W. Levasy the notes which had been executed by Gillenwaters to him, and he at the same time paid and accounted to

W. W. Leary got all the money paid to him on said notes
by Jas. Gillenwaters and all seemed perfectly satisfied
with what had been done.

And ~~further~~ ^{that} at this meeting Jas. Gillenwaters
W. W. Leary & S. H. Leary were all there present, and
all this took place before any suit was brought:

And further this witness saith not.

Stokely Lawson

Fielding Testament another witness of lawful age being summoned.

I was present and saw S. H. Leary deliver to W. W.
Learys some the horses known as the Gillenwaters horses.

And further this witness saith not.

Fielding ^{this} Testament
sworn

Virginia Lee Bounty Trust

I do certify that the foregoing depositions of S. H. Leary
John T. Leary, Stokely Lawson & Fielding Testament were
taken before me, sworn to and subscribed by them the
5th day of Nov. 1884.

Harry J. Morganbant.

Sanders H. Leeway

25. } Defs.

Jas. Gillenwater

(A.B.)

Virginia

At a Circuit Court Continued and held for Lee
County at the Court House thereof September 4th 1883.

James Gillenwaters

Plaintiff

vs

S. H. Livacy

Defendants

In Chancery

* * * * The paper offered as a bill of review is there-
fore treated as a petition for a rehearing; and as
such is allowed to be filed; And a Rule is awarded
against Gillenwaters and S. H. Livacy, to answer
the same and the cause is continued.

A Copy Left -

J. A. Hyatt clerk

For
James Stillwaters

Virginia

At a circuit court continued and held
for Lee County at the Court House Sept 4th 1883.
James Gillewaters Plaintiff

vs
S. H. Livacy et al Defendants } In Chancery

The paper offered as a bill of review
is therefore treated as a petition for a
rehearing; and as such is allowed to be
filed: and a Rule is awarded against
Gillewaters and W. W. Livacy, to answer
the same and the cause is continued.

Copy Lest -

J. A. Wyatt ckr

S. H. Livacy
add⁴/₃ copy of rule

James Sullivanwaters

abd 97

2 copies

John & Walter Roberts
sold to W W Leracy
he conveyed to S H Leracy
and S H Leracy back to
W W Leracy and W W L
Sold to Jas Sullivan

W W Leracy
To { Little Bond
James Sullivan

(A)

W W Leracy
To { Little Bond
Jas Sullivan

Know all persons by these presents that I
William W. Gersay am held and firmly
bound unto James Gillenwater in the pen-
al sum of four thousand dollars lawful
money of the united States for the true
performance thereof. he binds himself his
heirs executors and administrators jointly &
severally: sealed with his seal and dated
this 8th day of January 1875.

The condition of the above
obligation is such that whereas the said
William W. Gersay has this day sold unto
James Gillenwater a certain tract or parcel
of land lying and being in the county
of Lee and state of Virginia containing two
hundred and fifty ~~acres~~ acres being the
same more or less being the land whereon
James Gillenwater now lives and resides at
Sinchuts the buildings and improvements
thereon the said James Gillenwater lives
and adjoining the lands of Patrick Leacy
Thomas Anderson Daniel Roberts and
Solomon Owens Hugh Gollier and Allen
Chandler and now when the said
James Gillenwater shall well and truly
pay the said William W. Gersay the sum
of Four thousand dollars pure money the
said William W. Gersay shall make or
cause to be made a good and sufficient
Warranted title to the above described
tract of land to the said Gillenwater

his heirs and ~~after~~ assigns then the
above to be null and void otherwise
to remain in full force and virtue

Given under my hand and seal
this day and year first above written

Test Thos. McPherson.
Test John Astor }
}

~~Witness my hand~~
Wm. W. Gervay
in att

Lee County Virginia October the 1st 1853.

Jesse Roberts doth goe 1 to divide his land betwixt his children by conditional lines for Andrew begin on a sugar tree hickory and service bush thence running a south course to the upper spring thence the spring branch to the waggon Road thence with the cross fence to a sweet gum bush thence to a small branch at the west corner of his fence and up said branch to the line north east to a stake corner to the Howard survey thence west to two white oaks beginning corner to a 440 acre survey with said line to the beginning.

For David beginning at the same and running to the spring thence southward up the point to top thence turning westwardly with the top of the ridge to the line where the 440 acres cross and with said line northwardly to the beginning this and a 150 acres and 15 acres of the Daugherty land for David.

For Jesse beginning on a hickory and mulberry corner to the 440 acre survey thence south East keeping the top of the point to cross the waggon road at a red oak thence thence with the line of the old Peach Orchard to the branch thence down the branch to where it is now cutting through a little bottom and till it empties into the same branch again. South 60 degrees East to the top of a point thence Eastwardly with the top keeping the top, turning southward to Howard line North East to Andrews land Daniels line to the beginning.

For Wallen beginning on a hickory and Mulberry corner to the 440 acre survey thence south 43 W to a branch, thence down the branch to a buckeye in a deer lick, thence Eastward to a beech corner to the Howard survey thence south 60 poles to a white-oak, thence south 15 W to state line thence East with the state line to Cook Andersons line and with that line, to the Howard line, thence Eastward to Jesses line, and with Jesses line to the beginning, this with a 36 acre joining its surveyed June the 13th 1852, for Wallen.

For John beginning on a beech on the bank of the branch, thence south 43 W to a white-oak beech, and sugar-tree on a steep bank, near a branch, thence down the branch, to the waggon road and about the same course, to a large poplar and two hickories on the state line, thence east with the state line to Wallens line, and with the same to the beginning, For Mary a survey or 472 acres on Newmans Ridge beginning at a white-oak on a spur near George Wallens this and a survey of 45 acres joining it in Tennessee for Mary. All the heirs to have equally free access to cedar and of spring water all to have free access to it after making this divide. All of the heirs after my death shall have free access to the above mentioned lands with the exception of selling till their death and at their death each one of their

heirs shall have their portion of his land if any of the heirs leaves their land the others shall take it into possession and have their equal benefits of it till he or his heirs shall return.

For Ruthy part of the estate three hundred dollars which shall be paid ~~and~~ when the youngest heir is twenty one years old or if one of the children should die having no heirs Ruthy shall have his land in the place of the three hundred dollars or if the money be paid and any die without heirs she may pay back

the money and have the land that is she may pay it back with the exception of their own part, if paid back it shall be paid on equal part to all the heirs if I die before the youngest heir is twenty one years of age I may shall have the use of all the property for the use of raising the children till they are all of age then this property may be sold for the use of paying the three hundred dollars to Ruthy and if it dont fetch three hundred dollars the boys shall an equal part, of the remainder if Nancy makes her choice to live and remain at this place my heirs shall equally bear their part in supporting her at this place from the date of the sale till her death or if Nancy makes it her choice to live with any of the rest of the children they shall equally have their part in supporting of her.

If Nancy marries after my death she may have a child

part of the property and leave the land ~~and~~ without
any claims on the childrens this as a mutual agree-
ment and will with us to our childrens.

Attest

Jessie L. Roberts

Stephen ^{his} ~~mark~~ ^{mark} Sargener

Jessie ^{his} ~~mark~~ ^{mark} Roberts and
Stacey ^{his} ~~mark~~ ^{mark} Roberts his wife

I Jessie Roberts will have power to sell or convey the
above mentioned lands as I please while I live or make
any other that I think proper, and I now say if there
is any caves mines or minerals found on the different
boundaries of lands that all of the heirs shall have
and equal part in them and I also appoint Andrew
my agent to settle my affairs and see that
the property goes to the use of raising the childrens this
is done at the assignment,
Virginia.

At a circuit court continued and held for
Lee County, at the courthouse thereof, on Wednesday
the 11th day of May 1859.

This day the last will and testament, of Jessie Roberts
was produced in court and proved by the oaths of Jessie
L. Roberts and Stephen Sargener attesting witnesses to
said will to be the last will and testament of Jessie
Roberts deceased, therefore the same was ordered to
be recorded and on the motion of Andrew Roberts
letters of administration is granted him, and therefore he execu-
ted bond in the penalty of one thousand, with

Camerel H. Duff, Daniel S. Dickinson, John H.
Allen, James N. Young & Mr. S. Martin as his securities
for the faithful performance as such administrator

Wm R. M. Hasbrouck Clerk
Attest Wm R. Gibson D.C.

Joseph Roberts
Copy of Will.

(B.)

Fee for this copy \$1.20

I. Wallen Roberts for and in consideration of four hundred dollars to one in hand paid, the receipt whereof is hereby acknowledged have this day bargained and sold and do hereby transfer and convey to William W. Livesay and his heirs forever a tract of parcel of land estimated at one hundred acres lying in the county of Lee and State of Virginia, in the Panther Creek Valley, and bounded as follows; - Beginning on a Hickory and Mulberry thence west to a beech thence south to a hickory in a deer lick thence East to a white oak and beech thence S. to the state line to a stake thence North with Noah Nandersons line to a white oak thence North East to Jesse Roberts line thence with Jesse Roberts line to the Beginning, to have and to hold the same to the said William W. Livesay his heirs and assigns forever, I do covenant with the said Mr W. Livesay that I am lawfully seized of said land have a good right to convey it and that the same is unincumbered, I do further covenant and bind myself and representatives to warrant and forever defend the title to the said land every part thereof to the said William W. Livesay his heirs and assigns against the lawful claims of all persons whatever, In testimony whereof I have hereunto set my hand and seal, this the fourth day of August one thousand eight hundred and seventy two.

Wallen^{his} Roberts (seal)
m & l

Eli Brewer (seal)

George^{his} Brewer. (seal)
m & l

Virginia Lee County to wit: - We Justices of the Peace in the

County aforesaid do certify that Wallen Roberts whose name
is signed to the writing above or herunto annexed bearing
date on the 14th day of September 1872. has acknowledged the
same before me our County on this the 14th day September 1872
Virginia.

Thos H. McPherson J.P.

Lee County to wit: We Justices of the peace in the county aforesaid,
do certify that Wallen Roberts whose name are signed to the writing above
or hereto annexed. bearing date on the 14th day of September 1872.

Oliver Brewer J.P.

Lee County Court Clerk's office the 21st day of April 1873. The foregoing
deed from Wallen Roberts of the one part, to W. Linesay. of the other
part, is admitted to record upon the certificates of Thomas H.
McPherson, and Oliver Brewer. two Justices of the peace in and
for Lee County State of Virginia.

Teste - W. A. Orr D.C.

Accep^y Teste - John R. Gibson D.C.

D

W. M. Linsay
True Copy of Deed
Wallen Roberts
Recorded As Deed Book
No 16 Page 2678
John R. Gibson
Dec 1872

This Indenture made this 21st day of May eighteen hundred and seventy three between William W. Livesay and Jane his wife of the county of Lee and State of Virginia. of the first part, and Sanders H. Livesay of the county and state aforesaid of the second part. Witnesseth, that in consideration of offit sum of one thousand five hund dollars in hand paid the said William W. Livesay and Jane his wife do grant unto the said Sanders H. Livesay a certain tract or parcel of land lying and being in the County and State aforesaid on the waters of Blackwater and part of the home tract of land of Jesse Roberts deceased, and bounded as follows to wit: Beginning on a hickory and Mulberry west to a beech, thence south to a hickory in a deer lick thence east to a white oak and beech, thence south to the state line to a stake thence North with Noah Andersons line to two white oaks on Hoards line, thence East with Hoards line to a white oak, thence North East to Jesse Roberts line thence with said Roberts' line to the beginning; Another portion. Beginning on a beech thence West to a white oak, beech and sugar tree on a steep bank of a branch, thence south down the branch near the wagon Roads thence crossing the roads shouth a straight line to a poplar and two hickories on the state line thence East with the state line to Wallen Roberts line, thence with said Roberts' line, to the Beginning on a white oak, beech and sugar tree thence west with Samuel Roberts' line to the state line, thence East with the state line to a poplar and two hickories, thence North to the beginning, and the said William W. Livesay and Jane his wife agrees for themselves and heirs together with all and singular the appurtenances thereto belonging to the said

Saunders H. Livesay and his heirs and assigns free from the
claims of them the said William W. Livesay and his wife or
their heirs and of all any person whatever do warrants
and defend forever by these presents in witness whereof the
said William W. Livesay and Jane his wife, have hereunto
set their hands and fixed their seals the day and year first
above written

Wm. W. Livesay Seal
Jane ^{her} Livesay Seal
mark
Sister F. H. Livesay }
Granville Livesay }

Virginia, Lee County to wit. I, Thomas McPherson a Justice of
of the peace in the county aforesaid, do certify that W. W. Livesay
a party to a certain deed bearing date on the 24th day of May
1873 and hereunto annexed personally appeared before me in
my county aforesaid and acknowledged the same to be his act
and deed and does not wish to retract it: Given under
my hand the 24th day of May 1873.

Thomas McPherson J.P.

Lee County, ^{Court} Clerk's office May 26th 1873. The foregoing deed from
William W. Livesay and Jane his wife of the one part, to Saunders
H. Livesay, of the other part, all of Lee County Virginia, was
this day acknowledged before me by the said Jane Livesay
to be her act and deed for the purposes therein mentioned,
and the said Jane Livesay being examined by me privately
and separate and apart, from her said husband and having the
deed aforesaid fully explained to her acknowledged that she
had willingly signed and executed the same, and wished
not to retract it, and said deed is admitted to record.

Sister - James W. Orr - clerk
Sister John R. Gibson S.C.

J. W. Livesey
From copy of Seed
W. W. Livesey

(5)

See for this 60 Cts

Commissioner's Office,

Jonesville, Va., *March 12th* 1877.

James Gullenwaters —

AGAINST

S. H. Swesay & others

Plaintiff,

Defendant. }

IN CHANCERY.

The parties to this suit, and all others interested are hereby notified, that at my office. in Jonesville, on the *16th* day of *March* 1877, I will proceed to execute a decree of the Circuit Court of Lee county, entered in the above styled cause, on the day of *December* 1876, (of its terms and requirements the parties are required to take notice and act accordingly), at which time and place all parties interested are required to appear and to produce and bring with them all necessary papers and such witnesses as they may desire to introduce touching any matter about which oral testimony may be desired.

HENRY J. MORGAN, Com'r.

James Gillewatus

vs. } Notice

S. H. Lwesay et al

March 16 1877.

Copies of this notice

was sent by mail

to the Ref + Deft Wks.

Lwesay about the 12th
day of March 1877.

H. Morgan

(AB)

James Gillenwater Deft }
 vs. } In Lohy
 S.H. + W.W. Lewisay + al Defts }

A conflict being likely to arise in this
 Suit as to the testimony in relation to the
 rents and profits of the land in controversy and
 the permanent ^{improvements} placed thereon by the Deft
 to abiate which, it is hereby agreed to refer
 those questions to Austin Bledsoe Thomas A.
 Anderson and John Baker and their
 estimate of said rents, and of the value of
 said improvements shall be binding and
 conclusive upon the parties

March the 20th 1857. James Gillenwater
 William W Lewisay

Having looked over the premises above referred
 to, and heard the statement of the parties and
 the evidence We the said Bledsoe Anderson +
 Baker after being duly sworn to render a
 true and impartial judgment as to the
 annual rental value of said land, and the
 permanent improvements placed thereon by
 the Deft are of opinion as follows

That said land is worth per year about	\$65.00
That the clearing done by Deft is worth "	\$55.00
That, building of house + crib is worth about	\$20.00
That " chain of Pumph logs &c. " " "	\$30.00
" " improvement in the way of fruit trees.	\$25.00
" " The amount of plank bought,	\$10.00

That the making of new rails is worth \$10.00
That the Taxes paid for two years amounts to \$12.50
Given under our hands this day of March 1877.

Thomas A. Anderson

John W. Baker

Auston^{his} + Bledsoe_{mark}

James Gillenwater

203 Subing Eastman Ave

St. H. W. K. Seveson

A.D.

1

S. H. & W. W. Livesay

To James Gellenwaters

1874 Jan 31	To Horses &c. paid you toward Land	500 00
" April 30	" Cash paid you " "	290 00
1875 April 30	" Cash " your assignee toward Land	100 00
" March 31	" Cash " you toward Land	5 00
	Total Sum paid you this amount	895 00

2

James Gellenwaters

To S. H. & W. W. Livesay

1874 Feb.	To rent of land sold you, from Feb 12 th 1874. to March 1-1877. being 3 years and 17 days at \$65.00 per year amounting to this sum	197 71
-----------	--	--------

3

S. H. & W. W. Livesay

To James Gellenwaters

From Feb 1874 'to Feb 1877.	To clearing and improving wild land	55 00
	" building cabin house & corn crib	20 00
	" bringing water to house in pump logs	30 00
	" Buying and setting out fruit Trees	25 00
	" Buying plank and repairing door &c.	10 00
	" Making and putting up new rails	10 00
	" this sum for taxes paid by one on land for 2 years	12 50
	Total Sum for improvements . . .	\$162 50

For 4th Statement see next page

S. H. & W. W. Livesay

To James Gullenwaters

Dr

1874 Jan 31.

To The value of horses & paid exp for land

500 00

" Interest on Same to March 1/77 3 years 10 mos

92 50

" Cash paid exp April 30th 1874

290 00

" Interest on Same to March 1/77 20, 10 m

19 30

" Cash paid exp April 30th 1875

100 00

" Interest on Same to March 1/77

11 00

" Cash paid exp March 31st 1875

5 00

" Interest on Same to March 1-1877

55

" The value of Improvements See Statement 3

162 50

Amount payments, improvements & Ints to March 1/77

\$1210 85

By rent of land from Feb 12/74 to Feb 12 1875

65 00

" Interest on Same two years

7 80

By rent of land from Feb 12/75 to Feb 12-1876

65 00

" Interest on Same one year

3 90

By rent of land from Feb 12/76 to Feb 12-1877

65 00

Interest on Same 17 days

19

By rent of land 17 days from Feb 12/77 to March 1/77

2 71

209 60

Balance due Gullenwaters March 1/77

1001 25

Said Livesays to said Gullenwaters

Dr

To aggregate amt of payments without Int

895 00

" " value of Improvements

162 50

By rents and Profits without interest

197

71

197 71

Bal due Gullenwaters March 1/77

\$859 59

James Gillenwaters
vs. { 5. Stenants.
Livesay & Livesay

(A6)

144 75 $\frac{1}{3}$

Eighteen months after date with interest
 from date I bind myself & heirs to
 pay C. T. Duncan ~~for~~ commission in
 the Chancery cause of James Gillen-
 water vs. Let Lacey & Co. One hun-
 dred & ~~forty~~ four ⁷⁵⁰⁰ dollars & Value
 of said land And as to this debt we waive
 the benefit of our homestead exemption
 Witness our hands and seals This 1st
 day of September 1879.

Witness:

James Gillenwater. *Seal*
 F A Stickley John ^{his} Roberts *Seal*
 mak

Twelve months after date with interest from date
We bind ourselves heirs to jointly and severally
to pay C.T. Duncan Commissioner in the
Chancery Cause of James Gillenwaters
vs. ~~St~~ Linsay et al. One hundred & forty
four dollars. ~~Seven~~ seventy five $\frac{1}{2}$ Cents value
received in land and as to this debt we waive
the benefit of our homestead exemption Witness
our hands and seals This 1st day of Sept 1879.

Witness: James Gillenwaters (Seal)
F. A. Shetley John ^{his} X Roberts (Seal)
_{mark}

Twelve months after date with interest from date
We bind ourselves heirs to jointly and se-
verally to pay C.T. Duncan Commissioner
in the Chancery Cause of James Gillen-
waters vs. ~~St~~ Linsay et al. One hundred
and forty four dollars and seventy five $\frac{1}{2}$ Cents
value received in land and as to this debt
we waive our homestead exemption Wit-
ness our hands and seals This 1st day of
September 1879.

Witness: James Gillenwaters (Seal)
F. A. Shetley John ^{his} X Roberts (Seal)
_{mark}

Know all persons by these presents that I.
S. H. Livsey am held and firmly bound unto
Jas. Gillenwater in the penal sum of Four thousand
dollars lawful money of the United States for
the true performance Whereof he binds himself his
heirs Executors and Administrators jointly & severally
sealed with his Seal and dated this 26th November
1873

The Condition of the above
Obligation is such that Whereas the said S. H.
Livsey has this day sold unto James Gillenwaters
a certain tract or parcel of lands lying and
being in the County of Lee and State of Virginia
Containing Two Hundred and Fifty Acres be the
same more or less being the lands whereon

W. W. Livsey now Occupys & Resides at Includes
the buildings house and improvements whereon
the said W. W. Livsey lives and adjoining the lands
of Patrick Livsey Thos Anderson Daniel Roberts
an Solomon Owens Hugh Holliker and Allen
Chandler and now. When the said James Gillen-
waters shall well and truly pay the said S. H. Livsey
the sum of Two thousand Dollars per money the S.
S. H. Livsey shall make or cause to be made a good
and sufficient Warranted title to the above described
tract of lands to the said Jas. Gillenwaters his heirs and
assigns then the above to be null and void otherwise to
Remain in full force and Virtue Given under my hands
and Seal this day and year first above written
Attest
John A. Moore Sanders, H. Livsey

com Linsey
1 yellow 140
~~Wheat~~ \$862
Oats 27 \$945
Bleedac 5
Money 750
money 200
\$2455
860
\$3315

Part of Papers
in
Gillenwater vs. Levacy

Residue in hands
of the Court
Mar. 31st 84

Reserved for Vacation
J. A. R.

(1)

Met according to subpoena, on the 14th day of
March 1876, at John H. More, School house, in the county
of Lee and State of Virginia given under my hand this
the 14th day of March 1876. Thomas, McPherson, D. P.

John Osbourn, a witness of lawfull age being
duly sworn deposeth and saith,

Questions by plaintiff Gillenwaters,

was you present when I and S. H. Geisay and
Wm. W. Geisay, exchanged bonds.

Ans. By witness. I was.

Question by same,

did or not the said Geisays claim on that
day that the right to said land was good.

Ans by witness,

My best recollection is that Wm. W. Geisay
claimed that the right was good, on that
and further this deponent saith not,
John Osbourn

John H. More, another witness of lawfull age being
duly sworn deposeth and saith,

Questions by same,

was you present, when I purchased the land now
in controversy, from S. H. Geisay.

Ans by witness. I was present, when S. H. Geisay executed
his bond to said Gillenwaters for right to said land.

(2)

Question by same,

did or not. S. H. Levisay and Wm. W. Levisay claim at that time that the title to said land was good.

Ans by witness. I do not recollect, whether or not they was any thing said on that day about the wright but I have heard Wm. W. Levisay say often that the title was good, since said Gillenwaters purchsed said land, from said Levisays,

Question by same,

was you present, when me and S. H. & Wm. W. Levisay exchanged bonds,

Ans by witness. I was,

Question by same,

do you or not recollect, whether they ^{or not} was same talk, between, said Gillenwaters in reference, to changing bonds with said Levisays, and if so, pleas. state what that conversation was.

Ans by witness. I do not recollect any conversation between said parties but said Gillenwaters did refuse to change bonds, ~~but after~~ ~~from the fact that he~~ was afraid of the title to said land, but after the persuasions of his friends he did changing bonds.

1 over

(3)

Question by same,

did you and Wm. W. Levisay come down to my house about the first of June 1845
Ans by witness yes sir I came to your house about that time, with Wm. W. Levisay

Question by same,

for what purpose did you & Wm. W. Levisay come for,

Ans by witness,

my understanding was for to get the matter between them settled so Wm. W. Levisay could get his money, and Mr Gillenwaters refused to pay him any more money from the fact that he was afraid of the wright to said land, and Mr Gillenwaters told Wm. W. Levisay that if he would pay him his money back, he would give up the land, and Mr Levisay said that he could not do it from the fact that he had disposed of his money so he was not able ~~in then~~ to do it and also Wm. W. Levisay claimed on that day that the wright was good.

Cross examination

Question by defendant Levisay

do you or not recollect after that time you speak of in the above answer, at A. B. Anderson's store, that I offered to take the land back and pay him \$300, in the fall and the balance the next fall

(4)

Ans by witness

yes sir I recollect it and Mr. Gillenwater
said he could not do with that amount
of money ~~about~~ the first payment,
and further the deponent, said not.

John A. Moore

James Gillenwater
depositions in Lee Co.
John W. Corley.

John W. Corley
depositions in Lee Co.
John A. Moore
James W. Corley.

J. P. Corley

Virginia, Lee county, to wit.

I James W. Corley Clerk of the County Court, in and for the
County and State aforesaid, do certify that the foregoing
depositions of John Osbourne & John A. Moore were taken
subscribed & sworn to before me at the time and place
and for the purposes in the caption mentioned.

Given under my hand, this 17th day of March 1876.

Thos. McPherson, C. C.

J H Leavey W W Leavey Andrew
Testament Bohm Roberts Wallen
Roberts Gentlemen Take Notice That
I will on The 18 day of March 1876
at the dwelling house of H J
Gillenwater in the County of Scott
and State of Virginia proceed to take
the depositions of H J Gillenwater and
others to be Read as evidence in my
behalf in a certain Suit in chancery
pending in the Circuit Court of Lee
County Virginia Whereas as I am
Complainant and J H Leavey and
others are defendants and if from any
Cause the Taking should not be begun
or being begun should not be completed I
will adjourn from time to time and
from place to place until the same
is completed

Respectfully
Jamus Gillenwater

James Gillinwaters
vs { Notice
S. H. Lewis, et als

Virginia Gee County to wit.

John, Osborn,

personally appeared before me and
made oath that he on the 26th 28th
& 29th of February & 1st of March 1876
he delivered a true copy of the within
to S. H. Lewis and others given
under my hand this the 10th of March
J. H. McPherson J. S.

I hereby release all errors to the judgment
at law recovered against me for \$500.00 on
the 4th day of September 1875 - by Sanders
H. Levasy for the benefit of Andrew Leelan
mont. Sept 23rd 1875 -

James Williamson

James Gillewater
vs J Release of Bonds
DeLroy et al

Know all men by these presents, that we James Gillinwaters
& John B Pennington are held and firmly
bound unto Andrew Testament in the just and full
sum of One thousand dollars, for the payment thereof well and
truly to be made to the said Testament we him ourselves
our heirs, executors and administrators jointly and severally
firmly by these presents. And we hereby waive the benefit of
our homestead exemptions as to this bond. Witness our hands
and seals, This the 23rd day of September 1875.

The condition of the above obligation is such that whereas the
above bound James Gillinwaters hath obtained from the Judge
of the Circuit Court of Lee County Virginia, an injunction, to stay
until the further order of said Court, all further proceedings on a
Judgment of said Court, recovered against him by Sanders
& Leacy for the benefit of said Andrew Testament, on the 4th day
of September 1875, for \$500.00 with legal interest thereon from
the 1st day of October 1874, till paid, and costs. Now if said
James Gillinwaters shall well and truly satisfy and pay said
Judgment, and all damages and Costs awarded against him
provided said injunction shall be dissolved, then this obliga-
tion to be void, otherwise to remain in full force and virtue.

James Gillinwaters Seal

John B Pennington Seal

James Gilliam et al
vs
Injunction Bond
of
Andrew Testament

Filed Sept 29th 1876.
James W Orr, clk.

I, John Roberts, have this bargained and sold and do
hereby transfer and convey unto William W. Livesay, and
his heirs forever, for the consideration of the sum of four
hundred dollars in hand a tract or parcel of land in
the State of Virginia, and County of Lee, District No 4,
Containing by estimation one hundred and fifty acres,
being the same more or less, and bounded as follows,
Beginning on a Mulberry on top of a spur running down
into a Hollow, and with the branch running southwardly
to the wagon road to a poplar, thence southwardly cross-
ing the wagon road running to the state line to three
trees, two hickories and a poplar, thence with the state
line West to P. H. Livesay's and W. W. Livesay's line, thence
Northwardly with said line, crossing the Valley to a beech,
near the wagon road, thence westwardly to a buckeye
in a Decar lick, thence Northwardly with the branch to
thence southwardly to the beginning excluding to have
and to hold the same to the said William Livesay his heirs
and assigns forever, I do covenant with said Livesay that
I am lawfully seized of said land, have a good right
to convey it, and that the same is unencumbered, I do
further covenants and bind myself, my heirs, and
representatives, to warrant & forever defend the title to the
said land and every part thereof, to the said William W.
Livesay, his heirs and assigns, against the lawful cla-
ims of all persons whatever this, the 25th day of December

1868. Witness my us

P. H. Livesay.
Stephen S. Surgeon

John ^{his} Roberts Seal
Malinda Roberts Seal

Lee County Court Clerk's Office, the 17th day of July 1869.

The foregoing Indenture of bargain and sale for land between John Roberts, of the one part, and William W. Levaay of the other part, being duly stamped, is admitted to record, the same having this day been acknowledged before me by the said Roberts to be his act and deed for the purposes therein mentioned.

Wm S. E. Thompson Clerk.

Copy

Wm John R. Gibson Esq.

William W. Levaay
From } Copy of Deed
John Roberts & wife

(6)

Fee for this 25 cts

Mr. James. Gillenwaters

I do hereby give notice that on the
6th day of March 1876, at the dwellinghouse
of Thomas McPherson in the County of Lee and
State of Virginia I shall proceed to take the
depositions of Stokely Lawson and others, which
when taken are intended to be read as evidence
on my behalf, in a certain suit in chancery
now pending in the Circuit Court of Lee County
in which ~~I am~~ you are plaintiff and I am
defendant; and if the said depositions be
not commenced on that day or if com-
menced be not concluded the same will
be adjourned & continued from time to
time & from place to place until the same
be completed. Yours truly

William W. Lawson

Feb. 26th 1876.

Virginia Lee county to wit.
 Hiram H. Gensong, this day

personally appeared before me and made
 oath that he on the 26. day of February, 1876
 he delivered a true copy of the within to James Hillman
 given under my hand this 26 day of Feb 1876

J. H. McPherson. J. P.

500.
 65774 / 577
 3143426 / 400
 149757 / 900
 43426 / 34674
 65774
 16124
 49.80

The deposition of Herald & Gillenwater
and others taken before me Henry S
Carter a Justice of the peace for the
County of Scott pursuant to notice
hereto annexed at Herald & Gillenwater
in said County on the 13 day of March
1876 to be read as evidence on behalf
of James Gillenwater in a certain matter
~~now~~ now depending in the Circuit of
Lee County where in the said Gillen
water is plaintiff and S M Levacy and
others are defendants

S Herald & Gillenwater as witnesses
of lawful age after being duly
sworn de poseth and saith

Question by plaintiff
was you present when I bought
the land in controversy of Sanders
M Levacy
answer

I was

Question by same
I ask Sanders M Levacy ^{and} S M Levacy
if the title of the land was good and
they both answered that it was good
that they would make a clear
title

Question by same
I ask them if there was any claims
or liens on the land any way and
they said there was not

and further this deponent sayeth not

Herald, S., Gillenwater

Solomon Owens a witness of law full
age after being duly sworn deposes
and sayeth

Question by plaintiff
did you by some ~~of~~ land ^{of} ~~the~~ ^{wro} Levee before
Gillenwater bought

answer

I did

Question by same
is the land you bought of wro Levee,
a part of the same tract that Gillenwater
bought of wro Levee

Answer

it was a part of the John Roberts tract
of land that Gillenwater bought a part
of

Question by same

I ask him if the title of the land was
good and ~~he~~ said it was

Question by same

some time about the first days of Oct 1875

Wm Leacy was at my house and at that
time he told me that the title of the land
that I had bought of him was good
and Wm Leacy told me in every conver-
sation me and him had up to that time
^{he said} that the title of the Gillanwaters land
was good
and further this deponent sayeth not

Salomon Bunn

The further taking of these depositions is
continued till the 17 day of March 1876
at John Mores School house in Lee County
Va

Given under my hand this 13 day of March 1876
Virginia Scott County Henry Stauter J
J Henry Stauter a Justice of the peace for the county
aforesaid in said State do hereby certify that the
foregoing deposition were duly taken sworn
to and subscribed before me at the times and
place mentioned therein
Given under my hand this 13 day of March 1876
H Stauter J J

with the following

of land the following

of land the following

James Gillinmatters
vs Depositions
D. L. Leray et als

Received by mail sealed
+ filed, Nov. 14th 1876.
James W. Orr, Clk.

These depositions

of land the following

of land the following

of land the following

W. M. Shafter the Justice that take the
following deposition do certify that the
following is the bill of cost incurred
in taking the same for the Justice of
the peace
Justice be
two witnesses fifty cents each

\$1.50
1.00
2.50

Supplement
Deposition

This Indenture made this the 24th day of may
Eighteen^{and} Seventy Three Between William W. Livsey
& Jane his wife of the County of Lee & State
of Virginia of the first part and Sanders H
Livsey of the County and State aforesaid of the
second part Witnesseth that in consideration of
the sum of One Thousand^{Five Hundred} Dollars in hands paid
the said William W. Livsey and Jane his wife do
grant unto the said Sanders H. Livsey a certain
Tract or parcel of Lands lying and being in the County
of Lee & State aforesaid on the waters of Blackwaters and
part of the Home Tract of Lands of Jesse Roberts Decea-
sed and bounded as follows to wit

Beginning on a Hickory and Mulberry. West to
a Beech thence south to a buckeye in a deer lick
thence East to a white oak and Beech thence south
to the State line to a stake thence North with
Noah Andersons line to two white oaks on Hoards
line thence East with Hoards line to a white oak
thence North East to Jesse Roberts Jr. line thence
with said Roberts line to the beginning another
portion. Beginning on a beech thence West to
a white oak Beech and sugar tree on a steep
bank of a Branch thence South down the
Branch near the Waggow Road thence Crossing
the road South a strait line to a poplar and
two Hickories on the State line thence East with
the State line to Waller Roberts line thence with

with said Roberts line to the beginning another
 portion Beginning on a white Oak Beech and sugar tree
 thence West with Daniel Roberts line to the State
 line thence East with the State line to a poplar
 and two Hickories thence North to the beginning
 and the said William W. Linsay and Jane his wife
 agrees for themselves and heirs together with all and
 singular the appurtenances thereto belonging to
 the said Sanders H. Linsay and his heirs & assigns
 free from the claims of them the said William
 W. Linsay and his wife or their heirs and of
 all and every person whatever do warrant and
 defend forever By these presents in witness
 whereof the said William W. Linsay and Jane
 his wife have hereunto set their hands and
 fixed their seals the Day & year first
 above written

Test

W. W. Linsay

Test Greenville Linsay

William W. Linsay Seal
 Jane Linsay Seal
 her mark

Pa Lee County to wit

I Thomas McPherson
 a justice of the peace in the County aforesaid
 do certify that Wm W Linsay a party to a certain
 deed bearing date on the 24 day of May 1873
 and herewith annexed, personally appeared before
 me in my County aforesaid and acknowledged
 the same to be his act and deed, and does not
 wish to retract the same. Given under my hand
 this 24th day of May 1873

Thomas McPherson J.P.

Lee County Court clerks office May 26th 1873.

The foregoing deed from William W Linsay and Jane his wife of
 the one part, to Sanders H Linsay of the other part, all of Lee County
 Virginia, was this day acknowledged before me by the said
 Jane Linsay to be her act and deed for the purposes therein
 mentioned, and the said Jane Linsay being examined by me
 privately and separate and apart from her said Husband and
 having the deed aforesaid fully explained to her acknowledged
 that she had willingly signed and executed the same and
 wished not to retract it, and said deed is admitted to record.

Teste James W Orr Clerk

Sanders H Lenasy

From Seed

M^r W Lenasy & wife

Recorded in Seed Book

No. 16 Page 654

M^r J. Quid

\$1.25
\$1.80
\$2.75 Paid May
2nd 1875

Levacy

Gilliwaters

Original Bill. ^{on 23rd Nov/1873} Alleges trade for land to have been made with S. H. Levacy, for the sum of \$2000. so And that S. H. & undertook and bound himself to convey, - that \$500. was paid in hand. And that the bond falling due April 1st. 1874 he paid \$395 = \$895 in all - And that on the 8th day of Jan 1875 - S. H. Levacy came to the plff & represented that he had that day re-conveyed said land to W. W. Levacy - from whom (W. W. L.) the S. H. & had purchased said land. And plff confiding in " " agreed to it, gave up the bond and took W. W. Levacy. - And further alleges that S. H. sold to plff & bound himself to convey, & afterwards recouped &c Bill filed Aug. 1875

S. H. Levacy Answer Dec. 1875 - Denys the trade was made with him - or that he was responsible for the title having lifted his bond - and adopts W. W. Levacy answer.

W. W. Levacy files his answer at the same time and denies that the trade was made with - S. H. L. - But with respect - and details the transaction

Depositions are taken S. H. L. and others & Gilliwaters cross-examine and the answers as to him and the trade as set out in the answer are fully sustained.

Levacy

achy - Memo

Gillinewaters

Duncan,

States the pond was
made from P.H.C.

Received \$770 - warrent
paid to W.W. Sevast
No such statement

Answer

James Gillenwaters against S. H. & W. W. Levesey

Opinion

In this case I am of opinion that the parties, by the substitution of the title bond of W. W. Levesey for that of S. H. Levesey intended it to operate as a discharge of S. H. Levesey from his obligation to make good the title. This is manifested by the surrender of S. H. Levesey's bond. S. H. Levesey's liability, therefore to Gillenwaters, on the contract, when the sale was annulled and set aside, ought not to extend further than to the amount received by him from Gillenwaters, and not refunded or paid over to W. W. Levesey before this suit was brought, and service of the subpoena on S. H. Levesey, to wit, on the day of 1875; or until S. H. Levesey had notice of the filing of the bill.

A payment made to W. W. Levesey after this date, I think ought not to discharge him. In determining whether I should reverse any of the decrees in this cause as to S. H. Levesey, it will be necessary to ascertain whether they are based on this principle. The decree of Dec. 8th, 1876, does not settle this question, in directing the account. It directs Judge Morgan to ascertain the sum paid the defendants. By Judge Morgan's report the sum reported paid is not discriminated, but it is stated as the amount paid to defendants. If Mr. Gillenwaters' deposition could be read against S. H. Levesey, it fixes distinctly the amount paid to S. H. Levesey at \$500.⁰⁰ \$270 + \$100 to S. H. Levesey's assignee, making \$870. It shows \$20. & \$5. p. t. to W. W. Levesey. But the excess of rents over improvements is equal to this \$25.⁰⁰ and on Mr. Gillenwaters' deposition the decree charging both S. H. Levesey & W. W. Levesey with the balance would be correct. S. H. Levesey having rec'd. the money was, in equity bound to refund it to Mr. Gillenwaters & W. W. Levesey, having by his bond undertaken for the sufficiency of title, was likewise bound. But the report of Judge H. J. Morgan shows distinctly on its face that this deposition was taken without notice to S. H. Levesey, either that the account would then be taken, or that any depositions would be taken, and that it was taken in his absence. Subsequently, on notice to depts. the report states, that an account would be taken, and that W. W. Levesey & p. t. appeared before him, and entered into a bond to abide the award of arbitrators as to the rents & improvements. No account was taken; the arbitrators are said to have made their award, & their finding is reported as the basis of Commissioner Morgan's report. To this report there are no exceptions.

If the report was regular and upon its face, properly charged S. H. Devesy, he could not complain of the decree of the Court based on it: but I believe the rule is well settled that any matter appearing plainly on the face of the report may be relied on even in an Appellate Court.

Now here it distinctly appears that no notice of the taking of Kellenwater's deposition was given S. H. Devesy, and it is the only paper accompanying the Commissioner's report that shows S. H. Devesy's liability for money received by him. It further distinctly appears that the accounts of rents and profits & improvements was based upon an award to which S. H. Devesy was no party, nor does it even appear when the award was made or that S. H. Devesy had notice of such an award.

He is certainly not bound by it. It seems therefore, that the decree of December 8th 1876, ought to be so far modified, as to S. H. Devesy, as to require the Commissioner to ascertain what amount or amounts were paid by plaintiff to S. H. Devesy, or to his assigns or assignees on the purchase made by plaintiff, of the land in controversy, with liberty to S. H. Devesy, if he can to show that this sum, ^{or any part of it} was repaid to W. H. Devesy before he had notice of the filing of the bill in this case, or the service of the subpoena on him. And that the decree of 5th of April 1877, confirming said report as to S. H. Devesy and decreeing against him jointly with W. H. Devesy for \$1001. ²⁵ with interest, &c. should be set aside

and the subsequent decrees against S. H. Leveay, based on this decree should be set aside. But all the decrees as to W. W. Leveay should stand and be obligatory on him as there is no error against him, in any respect, except that interest is given against him on a balance of \$1001.²⁵ when interest should only have been given against him ^{on} the principal sum, to wit \$859.⁵⁹, thus avoiding compound interest.

In accordance with these views a decree will be entered, modifying the decree against W. W. Leveay as to the interest, but in all other respects affirming the decrees as to him; but modifying the decree of 8th Decr. 1876, as to S. H. Leveay so as to refer the question of his receipts of purchase ^{money} individually, & the amount for which he is responsible to the Commissioners as well as the question of rent, improvements, and annulling as to S. H. Leveay, all the decrees, subsequent to 8th Decr. 1876.

James Gillenwaters Complainant

S. H. Leveay et al Defts. : S. In Chancery

This cause came on this day ~~again~~ ^{to be heard} and be reheard ~~as to~~ the defendant, S. H. Leveay, on the papers heretofore read and the answer of Complainant to the petition for a rehearing with replication thereto, and was argued by counsel. On consideration whereof, and pursuant to a written opinion filed in the cause, it is adjudged, ordered and decreed that ~~the~~ ^{be so} ~~the~~ decree of Decr. 8th 1876, ~~be so~~ ^{be so} modified

Decree

as to require Commissioner, H. J. Morgan to ascertain what sum of the purchase money for the lands in controversy came to the hands of deft. S. H. Levey, either by payments to him, or by his receipts upon assignment, or transfers of the purchase money notes; and that he also hear proof of any payment, or payment thereof, made by said S. H. Levey to W. W. Levey before service of the subpoena in this cause on him, or his notice of the filing of this bill ~~showing the amount~~ and the Commissioner will show the amount in the hands of said S. H. Levey, if any, at the date of said service or notice. He will further ~~show to said~~ ^{as to said} S. H. Levey open the account of rents & improvements, and restate the same, upon such evidence as either said Callinwater or said S. H. Levey may offer. And on the principles of this decree & the aforesaid opinion filed in the cause the Commissioner will ^{show} the balance of purchase money received by said S. H. Levey for which he should be held to account to plaintiff. And as to all the said S. H. Levey, all the decrees subsequent to the decree of Decr. 1876, are set aside: and as to the said W. W. Levey they are all held valid. But the decrees allowing interest on \$1000.²⁵ from 1st March 1877 till paid, are amended so as to allow interest only on \$859.⁵⁹ from 1st March 1877 till paid. And report of Commissioner Morgan is re-committed to him for the purpose of this decree. He will report his action hereon to Court and the cause is continued.

Callinwater
& Opinions &
Levey's Decree

Entered pages 322-3
J. P. Whigham c.c.

Enter to Court
J. P. K.
Aug. 27/87

The Commonwealth of Virginia:

To The Sheriff of Lee County:—Greeting.

WE COMMAND YOU TO SUMMON *Sanders & Leuacy, W. W. Leuacy*
Andrew Testament, John Roberts and Wallen Roberts

to appear before the Judge of the *Circuit* Court of Lee County, at the Court-house, in the
Clerk's Office, *at October* Rules next, to answer a bill in chancery, ex-
hibited in our said Court against *them by James Gillinwaters*

And have then there this writ. Witness, JAMES W. ORR, Clerk of our said Court, at the
Court-house, this *29th* day *September*, 1875, in the *100th* year of the Commonwealth,

James W Orr, Clerk.

To enjoin and inhibit the collection of the several debts
in the plaintiffs bill mentioned, until the future order
of the Court, bond with security having been given by
the plaintiff, as required by the order granting the
injunction.

Teste - James W. Orr. Clerk

1 Nov 8

James Gillman et al.

vs J. Spa in Chy.

Sanders & Sonney et als.

October Rules 1875.

Executed.

Thos J. Eely, S.S.

for Thos J. Eely, S.C.C.

Lee County, Va writ

Francis Miles const of said county,

I command you in the name of the Commonwealth of Va. to summon John. Osbourne & John. A. More to appear on the 17th day of March, 1876 at John. A. More school, house in the said county, before me a justice of the said county, as may then be there to give evidence in behalf of James. Gillenwaters, in a certain suit in the circuit court of the county of Lee and State of Virginia wherein the said Gillenwaters is plaintiff and Wm. W. Gevisay and others are defendants given under my hand this the 17th day of March 1876.

Thos. McPherson, C. J.

Suspension for

John. H. Moore &
John. Ashburn.

we except the legal
seems of the within
suspension this the
17th day of March 1870

J. A. Moore
John Ashburn

Mr. Sanders & Leracy W. H. Leracy. Andrew Lister-
ment Waller Roberts and John Roberts.

Take notice that on Friday the 11th day of August
1876, at the ~~dwelling~~ house of John A Moore in
Lee County Virginia I will proceed to take the dep-
osition of John A Moore and others which
depositions are intended to be read as evidence
in my behalf in ^{a suit in} chancery ~~cause~~ now pending
in the Circuit Court of Lee County Virginia in
which I am Plaintiff and you are defendants
and if from any cause the taking of said dep-
ositions should not be completed on that
day the taking thereof will be continued from
day to day and from time to time and from
place to place until they are finished
Given under my hand this 25th day of July 1876.

James Gillenwaters.

Virginia Lee County To wit

This day George Osborne personally appeared
before me Thos M. Pherson a Justice of said County and
made oath that he delivered a true copy of the within notice
to W. W. Lumsy ~~and~~ ^{Walter} Roberts on the 31st day
of July 1876. Given under my hand this 11th day
of August 1876. — Thos. McPherson J.P.

James Williamson
Notice to take Dep.
25
James W. Lumsy it also

Virginia Lee County Court

To the Sheriff of Lee County Greeting

For and Summon Fielding Testament John T. Sway
Stokely Emerson & Thomas Mow ^{John M. Tate} to appear before me at
my office in Jonesville on the 5th day of Nov. 1884
to give evidence on the part of S. H. Sway against
James Killenwaters Given under my hand this
~~5th~~ day of Nov. 1884.

Henry J. Morgan Court.

S. H. Livsey

vs. { Jan

John Githens

Executed on all
the parties but
Thomas More
Nov 5th 1884

Stately Lawson
D. S. L.